RTA HANDBOOK

FOR LANDLORDS & TENANTS

RESIDENTIAL TENANCIES ACT & REGULATIONS

Alberta Government

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INTRODUCTION

PURPOSE:

This Handbook is designed to explain the rights and responsibilities of all tenants, landlords, and agents involved in renting residential premises in Alberta under the *Residential Tenancies Act* (RTA) and regulations:

- Residential Tenancies Exemption Regulation
- Residential Tenancies Ministerial Regulation
- Residential Tenancy Dispute Resolution Service Regulation
- Security Deposit Interest Rate Regulation
- Subsidized Public Housing Regulation

The Handbook will explain the minimum legislated requirements set out in the RTA. It provides landlords and tenants with options to deal with matters **not** established as minimum requirements and makes residential tenancy resource material available in a user-friendly format.

HOW TO USE THIS HANDBOOK:

Words and terms that are commonly used in relation to tenancies and the RTA are defined in the Definition section at the beginning of this handbook. The sections include Statutory References, Guidelines, Practical Applications, and Forms information.

CASE LAW

You can search for cases tried in Alberta Court of Queen's Bench pertaining to "residential tenancy" - http://www.canlii.org/en/ab/abqb/

ENVIRONMENTAL PUBLIC HEALTH LEGAL PENALTIES & ORDERS

The Environmental Public Health Program may prosecute owners and operators of public places that continue to use unsafe practices that may endanger people. Orders and court cases are available at this link http://www.albertahealthservices.ca/eph/Page3150.aspx

DISCLAIMER:

As a Handbook on residential tenancy matters, this does **not** set out everything in the RTA, nor does it state the law. Landlords and tenants should refer to the RTA to determine their legislative rights and obligations. In every instance, the law as set out in the RTA governs.

DEFINITIONS

There are a number of words that are commonly used in the RTA, regulations, and in the rental business. Understanding what these words mean, and how they are used, is an important part of understanding what residential tenancies are all about.

These are plain language definitions for the commonly used terms in this guide.

A

Abandon	An action of a tenant who leaves the residential premises before the end of the tenancy, without giving notice to the landlord that they are leaving.
Abandoned Goods	Any property a tenant leaves behind after they move out of the residential premises.
Abatement Of Rent	A reduction in the amount of rent a tenant is required to pay to the landlord. An abatement of rent can occur on a one-time-only basis; for a specified period of time; or be on-going.
Agent	A person who has been given the authority by another person to undertake certain activities on their behalf. Examples include: • A leasing agent who is given the authority to enter into a residential tenancy agreement with a tenant on behalf of the landlord. • A building caretaker who is given the authority to enter the residential premises to make repairs on behalf of the landlord.
Agreement	See Contract definition
Assign Or Assignment	A person assigns their right or obligation to another person, or the written document that transfers a right or obligation. • An example is the tenant in a fixed term tenancy wants to move out of the residential premises before the end of the residential tenancy agreement. The tenant finds someone else who will move in and take over the tenant's rights and obligations. The tenant wants to assign the residential tenancy agreement to this other person.

B

Bailiff	See Civil Enforcement Bailiff definition.
Breach	Refers to breaking, or **not** keeping, one or more of the promises a tenant and landlord made to each other in the residential tenancy agreement. • A breach can happen when either the tenant or the landlord doesn't do what they promised to do, or when they do something they promised **not** to do.

C

Civil Enforcement Agency	A person who is authorized by agreement under the *Civil Enforcement Act* to operate as a civil enforcement agency. • Civil enforcement agencies are privately owned and operated bailiff companies. They are authorized by the Sheriff on behalf of the Minister of Justice to carry out seizures on personal property, sell seized property, distribute proceeds from the sale of seized property, carry out evictions and carry out court orders. • Look for them in the yellow pages under Civil Enforcement Agencies.
Civil Enforcement Bailiff	A person who has been appointed by the Sheriff under the *Civil Enforcement Act*. A civil enforcement bailiff has the authority to seize property that belongs to someone who owes money. Civil enforcement bailiffs are employed by or under contract to a civil enforcement agency and have the authority to seize personal property, remove seized property, carry out court orders and evictions.
Common Areas	Those parts of the residential premises that can be used by all tenants and are under the control of the landlord. • Common areas may include hallways, stairs, tenant storage rooms, parking areas, sidewalks, landscaping and laundry rooms.
Consent	Means to give permission. • An example of consent is that the landlord has to give permission to the tenant before the tenant can change the locks to the residential premises. • Another example of consent would be the tenant giving permission to the landlord to enter the residential premises without notice to do an inspection or make repairs.

Contract	The promises made by two or more people to each other, that each will do something that will benefit the other. • In a contract, there **must** be agreement by all the persons on what they are promising each other. • Can be in writing or spoken words. • The residential tenancy agreement is a contract. • In law, a contract is enforceable through the court.
Control	Refers to having the legal right to make a decision. • An example of control is that the tenant can make the decision where to put their belongings inside the residential premises. • Another example is that the landlord can make the decision what colour to paint the outside of the building.
Court	The Provincial Court of Alberta or the Court of Queen's Bench of Alberta
Covenant	The RTA says there are certain things the landlord and the tenant **must** do or **not** do. It can also be a promise between a landlord and a tenant.

D

Damage	Refers to harm to property or a person. The court or Residential Tenancy Dispute Resolution Service (RTDRS) decides if there has been damage and who caused it.
Damage Deposit	See "security deposit" definition
Damages	Refers to the amount of money that is needed to repair any damage that has been done. When the court or RTDRS decides there has been damage, and who caused it, and who is responsible to fix it, the court or RTDRS also determines the financial remedy.
Distraint, Distrain Or Distress	The common law remedy of the landlord to seize the tenant's property through a civil enforcement agency when the tenant hasn't paid the rent. • The landlord **cannot** use the remedy of distraint if the landlord has terminated the tenancy.

E

Evict	The procedure used to remove the tenant and their possessions from the residential premises when the tenant doesn't leave at the termination of tenancy.
Evidence	Any type of proof presented by the landlord or tenant including: • Written documents (tenancy agreement, receipts, letters, pictures, witness statements). • Photographs, video or audio recordings and other physical evidence. • Oral statements of the parties or witnesses
Exclusive Possession	Having possession, control and use of the residential premises.

F

Fixed Term Tenancy	A tenancy that begins on a specific day, and ends on a specific day. • **Neither the landlord nor the tenant has to give notice to the other party to end the fixed term tenancy agreement.** • If the landlord agrees to allow the tenant to continue renting, the RTA says the tenancy automatically becomes a periodic tenancy, unless the landlord and tenant make a new residential tenancy agreement.

H

Habitable	The residential premises **must** be fit for someone to live in. • The *Public Health Act*, Minimum Housing & Health Standards and other Regulations, Bylaws and Codes, all set out requirements for the condition of premises where people live. If these requirements are **not** met, then the premises may be deemed **not** habitable
Holiday	In accordance with the *Interpretation Act*, if a due date, under the RTA, falls on a holiday or Sunday, the next business day becomes the due date, e.g., January 2 and July 2.

I

Inspection Report	A written report that the landlord and the tenant do together at the beginning and end of the tenancy. The report records the condition of the residential premises before the tenant moves in, and after they move out. The inspection report done at the beginning is often called the move-in inspection report, and the one at the end is often called the move-out inspection report. The residential premises **must** be fit for someone to live in. The RTA says the inspection report has to be in writing; that both the landlord and tenant should be present when it is done; and that both should sign it after it is done. • The RTA says the inspection report **must** include certain statements that **must** be signed within the report. • A landlord can do the inspection without the tenant being present if the landlord has offered the tenant two inspection times and the tenant does **not** agree to attend. • A copy of the move-in and move-out inspection reports **must** be given to the tenant as soon as they are completed.

L

Landlord	The legal owner of the residential premises, or some other person that has control of the residential premises. • A property manager, leasing agent, caretaker, building manager, or any other person who controls whether someone can rent the place is a landlord. • A person who, in law, has the same rights as the landlord is a landlord. Examples include the heirs of the landlord; secured creditors acting on their security; or someone who obtains ownership from the landlord. • Any person who has a right of possession of the residential premises and the right to go to court to ask for enforcement of the landlord's rights is also a landlord. An example of this is a tenant who has entered into an agreement with the landlord to assume the role of landlord in renting out units within specified residential premises.

M

Maintenance	Refers to looking after the residential premises. It includes keeping the premises reasonably clean. Generally speaking, unless the residential tenancy agreement says something different, the landlord is responsible for maintenance of the common areas and the tenant is responsible for maintenance of the inside of the residential premises.
Month-To-Month Tenancy	A periodic tenancy that automatically renews each month.

N

Normal Wear And Tear	The gradual worsening of the condition of property over time that happens even when the property is looked after properly. • For example, even if walls are regularly washed and cared for, eventually over a number of years, they will have to be repainted. This is normal wear and tear. If the walls are **not** looked after, or holes are knocked in them, this is damage and **not** normal wear and tear. • Another example is that carpets wear out over time and have to be replaced, even though they have been properly and regularly cleaned. This is normal wear and tear. • Cigarette burns, oil stains, or pet stains in the carpet that require expensive cleaning or replacement of the carpet before it is worn out is damage and **not** normal wear and tear.
Notice	A written document from the landlord to the tenant, or from the tenant to the landlord, about something in the residential tenancy agreement. A notice should always be written, show the date of the notice, and be signed by the person giving the notice.
Notice Of Entry	A written notice that a landlord serves on a tenant when the landlord wants to enter the residential premises. Once a landlord has served the proper notice of entry, the tenant has to allow the landlord entry to the residential premises at the time specified in the notice of entry for the reason stated. • The tenant can, of course, consent to the landlord entering the residential premises at any time. • The RTA says that a landlord does **not** have to give a notice of entry if the landlord has reasonable grounds to believe that there is an emergency in the residential premises, or that the tenant has abandoned the residential premises.
Notice Of Objection To Seizure	A form that the civil enforcement bailiff gives to the tenant. The tenant can fill out the form and file it with the seizing civil enforcement agency within 15 days to object to the seizure.

Notice Of Termination	A form that a landlord or a tenant serves on the other party to end the tenancy.
Notice To Vacate	A form that the landlord serves: • On people who are **not** tenants and who are living in the residential premises with the tenant, and who are **not** authorized by the landlord to live in the residential premises (14-day notice). • On people who are **not** tenants and who are living in the residential premises after the tenant has abandoned the residential premises (48-hour notice).

O

Order for Possession	A document that a court or RTDRS gives to a landlord to direct a person to move out of the residential premises.
Overholding Tenant	A tenant who does **not** move out when the tenancy has ended, and no longer has a right to be there. • An example is the tenant who stays after the fixed term tenancy has come to an end, and there is no periodic tenancy that allows the tenant to stay in the residential premises. • Another example is a tenant who does **not** obey a court or RTDRS order that says the tenancy is terminated.

P

Peaceful Enjoyment	The right of the tenant **not** to be disturbed while living in the residential premises so long as they meet their obligations under the residential tenancy agreement. This includes disturbance or conflict with the landlord or with other tenants in the same building. It is the landlord's responsibility to take action if something is causing problems for the tenants like: • Excessive noise (other than activity in the normal course of everyday living). • Aggressive or obnoxious behavior. • A disturbance caused by the landlord, tenant or someone permitted on the premises by the landlord or tenant.
Periodic Tenancy	A tenancy that ends automatically at the end of each week, month or year and then begins again automatically at the beginning of the next week, month or year.
Prescribed	Detail that is stated in the Regulations. There are several instances in the *Residential Tenancies Act* that speak to something being prescribed. The Regulations are another form of law that is in addition to the law contained in the *Residential Tenancies Act*.

R

Remedy	Means, in law, when someone is able to go to court or RTDRS and ask the court or RTDRS to address a problem they are having. • An example is that the landlord is able to go to court and ask the court to give them an order of possession when the tenant has **not** paid the rent and will **not** move out. • Another example is when the tenant repairs something in the residential premises that the landlord ought to have fixed. The tenant can go to court and ask for an abatement of rent or payment for performing the landlord's obligations.
Rent	Rent is normally an amount of money that the tenant agrees to pay to the landlord on a certain day for each tenancy period (weekly, monthly or yearly) that the tenant is living in the residential premises. • Rent can be anything of value that the tenant gives to the landlord, and the landlord takes, to allow the tenant to live in the residential premises.
Repair	Fixing something that's either broken or **not** working properly. It also means looking after the residential premises and the things in it so that they don't need fixing (keeping the place in good repair). • The residential tenancy agreement should say what the landlord is responsible for looking after and repairing, and what the tenant is responsible for looking after and repairing. • If the agreement does **not** speak to this issue, the landlord is usually responsible for the building structure (including windows, doors, walls, roof, ceilings, and floors), the plumbing, wiring, and heating and air conditioning (if there is any) and appliances provided by the landlord. This would also include the common areas unless the parties agree otherwise, which includes the hallways, utility and storage rooms, parking areas, sidewalks and landscaping (including lawn care and snow removal). • The tenant is responsible to keep the inside of the residential premises clean and **not** cause any damage. Things like replacing burned out light bulbs and smoke detector batteries are the tenant's responsibility.
Repudiation, Repudiate	To refuse to perform the right, duty, privilege or obligation owed to the other party under the contract, or residential tenancy agreement.

Residential Premises	The place the tenant rents from the landlord to live in. For the purpose of this handbook, residential premises includes the yard of a single family, semi-detached or condominium dwelling, etc., and detached buildings such as a garage or a storage building, that is for the exclusive use of the tenant.
Residential Tenancy Agreement	The contract, sometimes called a lease, between the tenant and the landlord to rent residential premises. • This agreement can be in writing; it can be in spoken words; or it can even be implied from the situation. • A verbal agreement is a contract between the landlord and the tenant that is **not** in writing. • An implied agreement is a contract that is **not** agreed to verbally or in writing by the landlord and tenant. They act towards each other in a way that is the same as if they did have an actual agreement.
Residential Tenancy Dispute Resolution Service (RTDRS)	The RTDRS provides landlords and tenants with an alternative to the courts for resolving disputes. After a landlord or tenant files an application, a Tenancy Dispute Officer hears the case and is authorized to make binding decisions on claims of up to $50,000.

S

Security Deposit	Money or other items given by the tenant to the landlord at the beginning of the tenancy. The security deposit, sometimes called damage deposit, is held by the landlord and applied against any damage caused by the tenant during the tenancy or other obligations of the tenant to the landlord. The security deposit can also be applied against the amount of rent owed and **not** paid at the end of the tenancy. • The security deposit **cannot** exceed the value of one month's rent. The landlord **must** hold security deposits in a separate bank account in trust for the tenant. The landlord **must** pay interest (as prescribed) on the security deposit either every year, or at the end of the tenancy. • The RTA says that, at the end of the tenancy, the landlord **cannot** use any of the security deposit to pay for damage caused by a tenant, unless a move-in inspection report and a move-out inspection report has been completed. (see Security Deposit section)
Seize	To take possession of personal property through a legal process.

Serve	To deliver a document, usually a notice, to someone. The RTA requires notices, orders and documents to be served personally, by registered or certified mail, or If the landlord is unable to serve the notice on the tenant because the tenant is **not** at the residential premises or is evading service, the notice can be served: • On any adult who apparently resides with the tenant, or • By posting it in a conspicuous place on some part of the residential premises, or • If a landlord or tenant **cannot** contact the other party in person, by registered or certified mail or by posting a notice on the premises, as a last resort the notice may be sent through electronic means. The electronic method must result in a printed copy of the notice. • Sliding a notice under the door of residential premises does not meet the RTA requirements for serving notices. • Security deposit refund cheques and statements of account can be served personally, by registered or certified mail and also by regular mail delivery. The courts and RTDRS may have different requirements for service of documents they use or issue.
Statement Of Account	A written document that the landlord gives to the tenant that itemizes interest earnings and deductions related to the tenant's security deposit. The landlord **must** provide the statement of account showing the actual costs, or an estimate of the expected costs, within 10 days of the end of the tenancy. If an estimated statement of account is initially provided within the 10 days, the final statement of account and any remaining balance **must** be provided to the tenant within 30 days of the end of the tenancy.
Substantial Breach	A breach of a covenant specified in the RTA. It can also be a series of breaches of the residential tenancy agreement that, added together, amount to a substantial breach or one serious breach of a covenant in the residential tenancy agreement. (see Termination of a Tenancy section)

T

Tenancy	The legal right to live in residential premises that someone else owns. A feature of a tenancy is that the tenant has, in law, the exclusive use of the residential premises. If the tenant lives up to their end of the residential tenancy agreement, the landlord has no right to interfere with the peaceful enjoyment of the residential premises.
Tenancy Month	A period on which a periodic tenancy can be based. A tenancy month does **not** necessarily have to be a calendar month. As an example, the tenancy month may run from the 1st day of the month to the end of the month, but it may also run from the 15th day of one month to the 14th day of the next month.

Tenancy Week	A period on which a periodic tenancy can be based. A tenancy week does **not** necessarily have to be a calendar week. As an example, the tenancy week may run from Monday to the next Sunday, but it may also run from Wednesday to the next Tuesday.
Tenancy Year	A period on which a periodic tenancy can be based. A tenancy year does **not** necessarily have to be a calendar year. As an example, the tenancy year may run from January 1st to December 31st, but it may also run from July 1st to June 30th.
Tenant	A person, or persons, who have permission to live in someone else's premises because they have a residential tenancy agreement. A tenant is also a person or persons who have permission to live in a place because of a sublet or assignment of a residential tenancy agreement. Included in the definition of tenant are the heirs of the tenant. • The RTA sets out certain instances when a tenant who is no longer living in the residential premises is still considered the tenant for such purposes as: the move-out inspection report, abandoned goods, recovery of damages and return of a security deposit.
Termination	The end of the tenancy and the residential tenancy agreement. • In a fixed term tenancy, the termination date is specified in the tenancy agreement. • In a periodic tenancy, termination happens when either the landlord or tenant gives the other party a proper notice of termination of the tenancy.
Trust Account	Security deposits **must** be deposited into a trust account within two banking days after a tenant makes the payment to a landlord. Security deposit trust accounts have to be at a bank, treasury branch, credit union or trust corporation and **must** contain only security deposit money.

U

Unit	See Residential Premises definition

RESPONSIBILITIES OF LANDLORDS AND TENANTS

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f) landlord definition

1(1)(k) rent definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(n) security deposit definition

1(1)(p) substantial breach definition

1(1)(t) tenant definition

16 landlord's covenants

17 copy of agreement for tenant

19 inspection reports

21 tenant's covenants

22 assignment and sublease

23 entry of premises

24 locks and security devices

44 trust account

45 interest on security deposit

46 return of security deposit

Residential Tenancies Ministerial Regulation sections:

4 inspection reports

GUIDELINES

The RTA states that a **landlord** may be:

- The legal owner of the residential premises, or some other person that has control of the residential premises.
- A property manager, leasing agent, caretaker, building manager, or any other person who controls whether someone can rent the place is a landlord.
- A person who, in law, has the same rights as the landlord is a landlord. Examples include the heirs of the landlord; secured creditors acting on their security; or someone who obtains ownership from the landlord.
- Any person who has a right of possession of the residential premises and the right to go to court to ask for enforcement of the landlord's rights is also a landlord. An example of this is a tenant who has entered into an agreement with the landlord to assume the role of landlord in renting out units within specified residential premises.

LANDLORD'S OBLIGATIONS

- Make the premises available for the tenant on the agreed move-in date.
- If a written residential tenancy agreement exists, provide a copy of that agreement to the tenant within 21 days after the day the Tenant signs the Agreement.
- **Not** to disturb the tenant's possession or peaceful enjoyment of the premises. This means that the landlord is **not** to bother the tenant beyond what is necessary and reasonable.
- Make sure that the residential premises meet the minimum requirements set out under the:
  (a.) *Alberta's Public Health Act;*
  (b.) *Housing Regulation;* and
  (c.) *Minimum Housing and Health Standards*, (can be found on the Alberta Health and Wellness website at www.health.alberta.ca/documents/Standards-Housing-Minimum.pdf)
  for the duration of the tenancy.
- Give the tenant a written "notice of landlord" within 7 days of the Tenant moving in, or post the notice in a very visible place in the building's common area. The landlord **must** keep the notice up to date.
- Complete move in-and move-out inspection reports and provide copies to the tenant as soon as they are completed.
- Inspect the residential premises with the tenant within one week before or after the tenant moves in and out. The landlord **must** give the tenant a signed copy of the inspection report and that report **must** comply with the required statements under the Regulations. (see Inspection Reports).
- If the locks are changed during the tenancy, provide a key to the tenant.
- Deposit all security deposits into an interest-bearing Trust Account at a bank, Treasury Branch, Credit Union or trust corporation in Alberta within two days of receiving the deposit. (see Security Deposits).

- Pay the tenant interest on their security deposit annually, at the end of each tenancy year, unless both parties agree that it may be paid at the end of the tenancy. This is sometimes addressed in the residential tenancy agreement.
- A new owner taking over a tenancy **must** give the tenant a notice of the owner's name and address within seven days, and a statement of the tenant's security deposit balance within a reasonable period of time. This **must** be provided at no cost to the tenant.

THE RTA STATES THAT A TENANT MAY BE:

- A person, or persons, who have permission to live in someone else's premises because they have a residential tenancy agreement.
- A person or persons who have permission to live in a place because of a sublet or assignment of a residential tenancy agreement. Included in the definition of tenant are the heirs of the tenant.

The RTA sets out certain instances when a Tenant who is no longer living in the residential premises is still considered the tenant for such purposes as: the move-out inspection report, abandoned goods, recovery of damages and return of a Security Deposit.

TENANT'S OBLIGATIONS

- Pay the rent on time.
- Be considerate of the landlord's and other tenants' rights.
- **Not** do anything that would put other tenants or the residential premises or common property in danger (example, do **not** let strangers into the building).
- **Not** perform illegal acts or do illegal business on the premises.
- **Not** commit a substantial breach of the residential tenancy agreement
- Keep the premises reasonably clean.
- **Not** do, or permit damage to be done, to the residential premises.
- If the locks are changed during the tenancy, provide a key to the landlord.
- Move out when the residential tenancy agreement ends or is terminated.
- Obtain written permission from the landlord to sublet the residential premises.

The RTA permits an oral residential tenancy agreement. Landlords and tenants are cautioned that the terms and conditions of an oral residential tenancy agreement are difficult to "prove" in a court or RTDRS if a dispute arises between the parties. Any change that will become part of an existing residential tenancy agreement should be in writing and be signed by both parties. The date that the change becomes effective should be stated.

The landlord **must** give the tenant a copy of the agreement within 21 days after the Tenant signs and returns it to the landlord. If the landlord does **not** provide this signed copy to the tenant within the 21 days, the tenant is allowed to withhold payment of rent until a copy is received. Once the signed copy is delivered to the tenant, all

the withheld rent is due and payable.

In addition to the rules in the residential tenancy agreement, the landlord may set up house rules for all the tenants. Both the landlord and tenant should have a copy of the rules. Some reasonable rules would be restricting real Christmas trees, pets, barbecues, satellite dishes, smoking or waterbeds. Landlords can change or add rules during the tenancy with the consent of the tenants. Landlords can change their "pet rules". If a landlord brings in a new "no pet rule", tenants who were allowed pets under the old rules can keep them, but **cannot** replace them.

Tenants **must** get the written permission of landlords to sublet or assign the residential premises to another party. The landlord may **not** refuse permission without reasonable grounds. If the landlord decides against the sublease or assignment, the landlord **must** give the tenant a written reason within 14 days after receiving the request. If the landlord does **not** answer the request within 14 days, the tenant may assume that the landlord agrees to the sublease or assignment. The RTA prohibits a landlord from charging a fee for giving consent to an assignment or sublease of a residential tenancy agreement.

In a sublease, the original tenant intends to return to the residential premises and resume the residential tenancy agreement. The original tenant gives all the obligations and rights of the residential tenancy agreement to the new tenant, for a time. The original tenant is still responsible to the landlord if the new tenant does **not** fulfill the obligations of the contract.

In an assignment, the original tenant will **not** return to the residential premises. The original tenant gives all the obligations and rights for completing the residential tenancy agreement to the new tenant. The new tenant becomes responsible for the residential tenancy agreement.

RESIDENTIAL TENANCY AGREEMENTS

The residential tenancy agreement, whether written or oral, **cannot** take away any of the rights, benefits, or protections for tenants contained in the Act.

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(e) fixed term tenancy definition

1(1)(f) landlord definition

1(1)(h) overholding tenant definition

1(1)(i) periodic tenancy definition

1(1)(k) rent definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(n), 43(1), 43(2) security deposit

1(1)(t) tenant definition

2 application

3 no waiver of rights

8 notice to terminate monthly tenancy

13 implied periodic tenancy

15 notice to terminate **not** required – fixed term tenancy

16 landlord's covenants

17 copy of agreement to tenant

18 notice of landlord

21 tenant's covenants

29 termination for substantial breach by tenant

38 possession unobtainable

There are no sections in the Regulations relating directly to "residential tenancy agreement".

GUIDELINES

Renting residential premises is a business agreement between the landlord(s) and the tenant(s). Landlords and tenants agree to the terms of their business agreement in a contract called a residential tenancy agreement. This residential tenancy agreement can be written, oral or implied. It is recommended that the agreement be written so both parties have a record of what is expected.

Like other contracts, the residential tenancy agreement outlines the terms of the relationship that will exist between the landlord and the tenant. It also sets out any conditions that have been agreed to by the landlord and the tenant. For example, it will probably include the rent amount, the services provided by the landlord and the responsibilities of both parties.

The tenant has the option of refusing to enter into a residential tenancy agreement that contains conditions they do **not** want to live by. The tenant may negotiate changes to the tenancy agreement or may choose to rent elsewhere.

The law relating to contracts is clear that once the landlord and the tenant both agree to the terms and conditions of the contract, it **cannot** be changed unless both parties agree or where allowed by legislation.

The RTA applies to tenants who rent residential premises, such as houses, apartments, mobile homes and duplexes. It also applies to rooming house and boarding house residents where the landlord provides both the room and meals, as long as the landlord does **not** reside in the residential premises. If a tenant pays to rent living space in a hotel or motel, etc., the RTA applies if the tenant lives there for more than six consecutive months. If an employer rents residential premises to an employee, the RTA applies.

The RTA does not apply to:

- Mobile home sites covered in the *Mobile Home Sites Tenancies Act*
- Business premises with living premises attached and rented under a single agreement
- Rooms in the living quarters of a landlord, if the landlord actually resides there
- Residential premises on military bases on federal lands
- Residential premises on First Nations reserves on federal lands
- Student premises at educational institutions, if students do **not** have exclusive possession of a self-contained dwelling
- A nursing home as defined in the *Nursing Homes Act*
- Lodge accommodation run by a management body or by an agreement with the Minister responsible for the *Alberta Housing Act*
- A supportive living accommodation licensed under the *Supportive Living Accommodation Licensing Act*
- A correctional institution
- Or any other prescribed premises, which are the following:

  (a.) An approved hospital as defined in the *Hospitals Act*

(b.) A provincial cancer hospital operated by the Provincial Cancer Hospitals Board under the *Cancer Programs Act*, and

The **Banff Housing Corporation** may refuse to give its consent to the assignment or sublease of a residential tenancy agreement under section 22(3) of the Act if:

- The assignment or sublease is to a person who does **not** qualify as a bona fide resident under the terms of that agreement,
- The assignment or sublease is to a person who does **not** meet the eligible resident requirements defined in the National Parks of Canada Lease and Licence of Occupation Regulations SOR/2002-237 under the *Canada National Parks Act* (Canada),
- The tenant has **not** obtained the consent in writing of the Minister of Environment of the Government of Canada, or
- The Banff Housing Corporation has reasonable grounds to believe that the assignment or sublease is to a person who does **not** meet the Corporation's qualification requirements to acquire an interest in a residential tenancy agreement.

NOTE: The *Residential Tenancies Act* (RTA) applies to residential sub-leases entered into by the federal Crown's tenant (landlord as defined by the RTA) and their tenant (sub-lessee) in National Parks for non-land related provisions. Whether a remedy sought by a landlord or tenant is land related or non-land related will have to be determined in each case as it may arise from time to time before the courts.

To eliminate any "surprises" once the tenancy has begun, a residential tenancy agreement should be in writing and contain the following information:

1. Date of agreement
2. Names and addresses of all parties
3. Address or description of the location of the residential premises
4. Term of the tenancy
5. Rent amount, where, when and how it is to be paid
6. Clauses about whether utilities, furniture, appliances, parking, etc. are provided and at whose expense
7. Names of the people who are permitted to live in the residential premises
8. Security deposit amount, authorized deductions and interest
9. Care, maintenance and repair responsibilities
10. Insurance requirements
11. Rules for additional fees (such as NSF charges), guests, pets, etc.
12. Signatures of landlord and tenant.

If a written residential tenancy agreement is dated August 1, 1992 or later the agreement **must** contain the following statement in print larger than the other print in the agreement:

"The tenancy created by this agreement is governed by the RTA and if there is a conflict between this agreement and the Act, the Act prevails."

For example, if a residential tenancy agreement states a tenant has to give two months' notice of termination for a monthly periodic tenancy agreement, this clause would be in conflict with the legislation. The RTA states that a monthly periodic tenant is required to give only one month's notice.

Another conflict with the legislation would be if a residential tenancy agreement states that the tenant will have to move out immediately if the rent is **not** paid in full and on time. If tenants do **not** pay the rent, the RTA allows landlords to apply to court or RTDRS for an order terminating the tenancy and an order of possession or landlords can give tenants a 14-day notice to terminate the tenancy for substantial breach. If the tenant pays the rent before the 14 days is up, the notice to terminate is **not** binding and is no longer effective. A tenant **cannot** object to a 14-day notice that is for non-payment of rent.

If the tenancy agreement is in writing, the landlord **must** give the tenant a copy of the agreement within 21 days after the tenant signs and returns it to the landlord. If the landlord does **not** provide this signed copy to the tenant within the 21 days, the tenant is allowed to withhold payment of rent until a copy is received.

The RTA requires a "notice of landlord" to be given to the tenant within seven days after the tenant takes possession of the residential premises. The "notice of landlord" **must** contain the name of the landlord and a postal address and physical location in Canada for that person. This information can be included in the residential tenancy agreement.

If the name, postal address or physical location of the landlord changes, the landlord has to provide all tenants with a new written notice of landlord, which **must** contain all three elements to meet the requirements of the RTA. The landlord **must** either give a copy to each tenant, or, in the case of projects with common areas, display a new notice where all the tenants can see it. The landlord **must** ensure that the notice, if placed in a common area, is replaced whenever the landlord becomes aware that the notice has been removed.

Tenants and landlords should make a habit of keeping a written record of every instance when there is a problem with the other party, what was done by both of them when the problem happened, and how they each responded.

A landlord may choose to offer an abatement of rent to a tenant to compensate the tenant for doing maintenance for the residential premises. This agreement should be in writing to protect both parties.

In Alberta, all landlords and tenants have responsibilities (obligations). The RTA clearly identifies these obligations and they apply to every residential tenancy agreement in Alberta, whether or **not** they are mentioned in the terms and conditions. *(see Responsibilities of Landlords and Tenants section)*

PRACTICAL APPLICATIONS

FIXED TERM TENANCY

A fixed term tenancy ends on the date specified in the residential tenancy agreement. No notice has to be given by the landlord or tenant to end a fixed term tenancy. It is courteous for the tenant and the landlord to provide the other party with a notice prior to moving out. No time frame is required for such a courtesy notice.

At the end of the fixed term the landlord and tenant may both want to continue the tenancy. At this time they can negotiate a new residential tenancy agreement that could include a change in the rent amount and the conditions of the tenancy. This agreement can be a new fixed term or change to a periodic tenancy.

If the parties do **not** notify each other of their intention to continue or terminate the tenancy, difficulties may arise. For example, the landlord may be expecting the tenant to leave at the end of the fixed term and may have plans for the premises.

If the tenant continues to live in the premises after the fixed term agreement ends and the landlord continues to accept their rent payments, but no new residential tenancy agreement is signed, the tenancy becomes a periodic tenancy. Once this occurs, the tenant is required to give the landlord proper notice to terminate the tenancy.

OVERHOLDING TENANT

If the tenant stays in the premises without the landlord's approval, the tenant becomes an overholding tenant. The landlord can apply to the courts or RTDRS for an Order for Possession of the property from an overholding tenant.

IMPLIED PERIODIC TENANCY

The RTA states an implied periodic tenancy is a combination of a fixed term tenancy and a periodic tenancy.

If the tenant stays in the premises after the end of the fixed term period with the implied consent of the landlord, the tenancy continues as a periodic tenancy. If the fixed term was for one month or more, the periodic tenancy becomes a monthly tenancy. If the fixed term was for less than one month, the periodic tenancy becomes a weekly tenancy.

The rules of periodic tenancies then apply to this tenancy. If the tenant or the landlord wants to terminate the agreement, they will have to give the proper notice.

PERIODIC TENANCY

A periodic tenancy renews or continues weekly, monthly or yearly without notice. The termination and rent increase provisions contained in the RTA apply to the tenancy.

ADDITIONAL FEES & CHARGES

The RTA does **not** prohibit the landlord and tenant from agreeing to fees and charges in addition to the security deposit and rent. The residential tenancy agreement should state any additional fees or charges, the circumstances that will give rise to them, and whether they are refundable or non-refundable. It is a good idea for landlords to give receipts for any payments from tenants. (see Residential Tenancy Agreements – Fees and Charges section).

A landlord **cannot** charge a security deposit plus an additional refundable "deposit", if the total amounts of all refundable deposits exceed the amount of the first month's rent.

FORMS

Residential Tenancy Agreement forms are available at a nominal cost from a number of organizations including Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association or the Alberta Residential Landlord Association.

Since the RTA does **not** require a particular form of residential tenancy agreement, landlords and tenants are free to use whatever form best suits their particular needs. However, the agreement **cannot** take away any of the rights, benefits or protections contained in the Act.

(see the Resources and Referral Information section for contact information for organizations that sell pre-printed Residential Tenancy Agreement forms.)

INSPECTION REPORTS

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f) landlord definition

1(1)(j) prescribed definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(n) security deposit definition

1(1)(t) tenant definition

19 inspection report

46 return of security deposits

Residential Tenancies Ministerial Regulation section:

4 inspection reports

GUIDELINES

The RTA says it is mandatory for landlords and tenants to complete both a move-in and move-out inspection report. Some other documents, like a written residential tenancy agreement are recommended, but are **not** required. Completing written inspection reports is mandatory. The landlord **must** always give the tenant a copy of the inspection report as soon as it is completed and **must** also keep a copy on file.

The landlord **must** keep inspection reports for at least three years after the tenancy ends. The landlord **must** allow the Director of Residential Tenancies, as defined in the RTA and named by the Government of Alberta, or an authorized person delegated by the Director, to look at these reports for the purpose of either an inspection or an investigation.

A landlord can only make deductions from a tenant's security deposit to pay for damage to the residential premises if the landlord and tenant completed written move-in and move-out inspection reports. (see Security Deposit section). These inspection reports **must** be done within one week before or after the tenant moves in, and within one week before or after the tenant moves out.

The inspection report **must** include the following statements and the signatures required by the Residential Tenancies Ministerial Regulation:

1. The date the inspection was conducted, the names of the people present during the inspection, and the landlord's signature;

2. A statement to be signed by the tenant if they agree with the results of the inspection;
3. A statement to be signed by the tenant if they disagree with the results of the inspection, and the reasons they disagree;
4. A statement to be signed by the landlord indicating the tenant refused to sign the tenant's statement, if the tenant refuses to sign the inspection report;
5. A statement to be signed by the landlord indicating that the inspection was done without the tenant, if the tenant was **not** present when the inspection was conducted;
6. A statement saying the inspections should be conducted when the premises are vacant, unless the landlord and tenant both agree to do the inspections while the rental premises are occupied.

When the move-in inspection report is done at the beginning of the tenancy, both the landlord and tenant are aware of the condition of the residential premises when the tenant moved in. When compared with the move-out inspection done at the end of the tenancy, it provides evidence of any change that has happened to the condition of the residential premises during the tenancy.

A landlord can conduct the inspection without the tenant being present if the landlord has offered the tenant two inspection times and the tenant has refused or did **not** attend. The landlord **must** offer the tenant inspection times between 8 a.m. and 8 p.m., on two different days that are **not** holidays. If a landlord does an inspection report when the tenant is **not** there, the tenant should carefully review everything in the report when they get their copy and add their own comments, if any, on a separate sheet of paper.

The inspection report should list what's in the residential premises - for example, the condition of the walls, floors, ceilings, windows, cupboards, appliances and plumbing fixtures. Taking pictures or a video that is kept with the copy of the inspection report is also useful, though **not** required. The inspection report should say what needs to be fixed and cleaned, and who will be responsible for looking after each item.

A tenant is responsible for ordinary cleaning and for cleaning the results of extraordinary or abnormal use. (see the "Sample Cleaning List" in this section). Some examples of damages to the physical condition of rental premises for which deductions can be made when inspection reports are properly completed, in most instances, are:

- Steam cleaning of rugs with obvious dirt, soil, oil or urine stains;
- Badly repaired holes in walls or floors;
- Pushed in door panels;
- Food, dirt or nicotine on walls, cupboards or appliances;
- Broken glass;
- Holes in window screens;
- Garbage or litter strewn about;

- Pet excrements.

A landlord can deduct for such things as obvious dirt, soil, etc., as long as the inspection reports were completed according to the RTA. Cleaning up foreign material is **not** considered a deduction for normal wear and tear. Some examples of normal wear and tear for which deductions are **not** allowed are:

- Professional shampooing of rugs, when there were no excess foreign materials;
- Professional cleaning of drapes, when there were no excess foreign materials;
- Painting walls, when there were no obvious stains or damage caused by the tenant.

A landlord **cannot** make deductions from a security deposit to restore or repair normal wear and tear, even if the residential tenancy agreement says differently. The RTA protects the security deposit from deductions for normal wear and tear by requiring landlords to complete move-in and move-out inspection reports. These reports allow the landlord and tenant to determine whether there are repairs or extra cleaning needed. If the inspection reports are **not** completed, the landlord is **not** entitled to take money from the security deposit to cover cleaning or repair costs.

If repairs or cleaning are required, but the landlord did **not** do the required inspection reports, the landlord can apply to court or RTDRS for a judgment for the debt owed by the tenant.

The security deposit can be used to cover the arrears or other charges even if inspection reports have **not** been completed. If there are rent arrears or other charges, like NSF fees, that do **not** relate to the condition of the residential premises, the security deposit can be used to cover the arrears or other charges.

If a landlord believes the tenant has abandoned the residential premises, the landlord **must** still make a reasonable effort to contact the tenant and arrange the move-out inspection. The landlord should keep a record of the attempted contacts.

A new landlord **cannot** deduct for damages from a security deposit if the previous landlord did **not** complete a move-in inspection report. A new landlord is responsible for getting copies of all tenancy documents, including inspection reports, from the previous landlord.

The move-out inspection report **must** be done within one week before or after the tenant moves.

The landlord has to document the inspection and give a copy to the tenant as soon as it is completed. As noted previously, a landlord is required to keep a copy of the inspection reports for at least three years after the termination of the tenancy. A landlord **must** make the inspection reports available for inspection by the Director of Residential Tenancies or an authorized person for the purposes of an inspection or investigation.

FORMS

Inspection Report forms for both the move-in and move-out inspections are available at nominal cost from the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association or the Alberta Residential Landlord Association. The forms are useful because they contain all the statements required by the Regulation, they have both the move-in and move-out inspections contained in the one form for ease of comparison, and they are printed in duplicate so there are copies for both the landlord and the tenant. (see the Resources and Referral Information section for contact information for these organizations).

Sample Cleaning List

The tenant should always check with the landlord to see if they have a cleaning list. If the landlord has **not** provided a cleaning list, the following is a suggested cleaning list for tenants to use before they vacate.

- ☐ Clean in, out, behind and under the fridge and defrost and clean the freezer
- ☐ Leave the fridge door open if the power has been turned off
- ☐ Clean in, out, behind and under the stove and clean the oven and burners on the stove
- ☐ Wash the cupboards inside and outside
- ☐ Clean inside and outside of all windows/tracks, closet doors/tracks and patio doors/tracks
- ☐ Wash walls and floors
- ☐ Dust curtain rods and window coverings or replace yours with the landlord's
- ☐ Dust or wash fans and vents, light fixtures, replace burnt out light bulbs
- ☐ Check the smoke detector, replace batteries as needed
- ☐ Clean bathroom thoroughly including the tub, tile, sink, vanity, mirror, medicine cabinet, cupboards and toilet
- ☐ Vacuum and clean the carpets, if necessary

SECURITY DEPOSIT

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f) landlord definition

1(1)(k) rent definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(n) security deposit definition

1(1)(t) tenant definition

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Residential Tenancies Ministerial Regulation sections:

1(c) security deposit trust account definition

4 inspection reports

7 trustee of security deposit trust account

Security Deposit Interest Rate Regulation (all sections)

GUIDELINES

A landlord can ask a tenant to pay a security deposit, which is money paid by a tenant in addition to the rent that is due. The landlord holds the deposit as security for damage, cleaning costs, unpaid rent or other obligations the tenant may have to the landlord. A security deposit is sometimes referred to as a damage deposit. The tenant's basic obligations are to look after the residential premises and pay the rent when it is due. If no rent is owing, no damage has been done and the residential premises has been cleaned, the money **must** be returned with interest after the tenant moves out.

The security deposit is **not** to be used as the last month's rent, which the tenant is responsible to pay.

SECURITY DEPOSIT DEFINITION

A landlord can collect a security deposit at the beginning of the tenancy. A security deposit can be money, property or right paid or given by a tenant that is agreed to by the landlord and the tenant. The security deposit amount should be listed in the tenancy agreement, which should be in writing.

The purpose of a security deposit is:

- To cover the landlord's costs of repairing or replacing physical damage to premises.
- To cover the costs of cleaning because of extraordinary or abnormal use. This does **not** include cleaning associated with normal wear and tear.
- To cover any arrears of rental payments.
- To cover other costs agreed to by the tenant in the residential tenancy agreement, such as legal fees, utilities, late fees, etc.

AMOUNT OF SECURITY DEPOSIT

A security deposit **cannot** exceed what the tenant would pay for the first full month of the residential tenancy agreement. It **cannot** be increased at any time during the tenancy, even if the monthly rent is increased later. (see the next section "Increase of security deposits"). If a residential tenancy agreement contains a clause that requires a security deposit in excess of one month's rent, that clause is illegal and unenforceable. The tenancy agreement **cannot** take away the rights provided by the RTA.

A landlord should give a tenant a receipt for the security deposit and any other payments that are received from the tenant. However, the RTA does **not** require the landlord to provide receipts.

A refundable fee or charge is part of the security deposit. A landlord **cannot** charge additional refundable fees, e.g., for an extra parking stall, if the total of the security deposit and the additional refundable fees to be paid by the tenant exceeds one month's rent. (see Residential Tenancy Agreements ~ Fees and Charges section).

A non-refundable fee or charge that is agreed to in the residential tenancy agreement is **not** subject to the security deposit restrictions. Non-refundable fees **cannot** be deposited into the security deposit trust account. For example, if a landlord charges $100 per pet as a non-refundable fee for the privilege of having a pet in the premises, this fee will **not** be held by the landlord as security, and will **not** be returned to the tenant. Therefore, this fee is **not** a security deposit as defined by the RTA.

Some residential tenancy agreements include a "late rent charge". If the tenant does **not** pay the late rent charge and if the charge is reasonable, the landlord is entitled to deduct the charge from the tenant's security deposit at the end of the tenancy.

INCREASE OF SECURITY DEPOSITS

A security deposit **cannot** be increased during the term of a tenancy.

PERIODIC TENANCY

If a periodic tenancy agreement has a "0", "nil", or "zero" in the space for the security deposit, or, if the space is blank, a landlord **cannot** later charge a security deposit as this would be an "increase".

For example, if a tenant paid a security deposit of $800 two years ago, and the rent has since increased on two occasions, first to $825 and now to $850, the amount of the security deposit **must** stay at $800.

If a tenant and landlord expressly state or imply that they intend that the tenancy be renewed or continued after the end of the fixed term tenancy, without signing a new tenancy agreement, the RTA states that the tenancy automatically continues as a periodic tenancy. (see Residential Tenancy Agreement section for Implied Periodic Tenancy). The security deposit increase rules for periodic tenancies then apply to this tenancy.

FIXED TERM TENANCY - RENEWAL

If a fixed term tenancy has a clause allowing it to continue as a periodic tenancy after the fixed term expires, the security deposit **cannot** be increased as this is considered the same tenancy. In this case, all of the conditions of the tenancy would stay the same except the term.

FIXED TERM TENANCY - NEW AGREEMENTS

Both parties can negotiate and agree to enter into a new fixed term tenancy agreement that contains provisions for an increase in the rent and security deposit.

TRUST ACCOUNT

All security deposits collected since August 1, 1992 **must** be deposited in an interest-bearing trust account. The security deposit **must** be deposited into the trust account within two banking days after the tenant makes the payment to the landlord. Security deposits received before August 1, 1992 can be deposited in the trust account, but it is **not** required by the RTA. The trust account has to be at a bank, treasury branch, credit union or trust corporation and **must** contain only security deposit money.

The landlord is the trustee for the tenant's security deposit money and the trust account name **must** include the words "in trust". The name on the account may refer to the landlord's name, the building name or the tenant's name, etc. An example is "ABC Rental Company, in trust".

INTEREST ON DEPOSITS

Interest on the security deposit **must** be paid to the tenant annually unless the landlord and tenant agree in writing that it will be paid when the tenancy ends. The interest **must** be compounded annually on the anniversary date of the tenancy if it's **not** paid annually to the tenant.

The rate of interest to be paid is set annually by the Government of Alberta. The formula for setting the yearly interest rate payable on security deposits is 3% less than the cashable one-year guaranteed investment certificates rate in effect on November 1st of the previous year offered by Alberta Treasury Branches Financial.

A landlord may agree in a residential tenancy agreement to pay a higher interest rate. The landlord is then bound to pay the tenant interest on the security deposit and the compounding interest at the higher rate.

SECURITY DEPOSIT INTEREST CALCULATOR

The Service Alberta website contains an online calculator that is programmed to calculate the interest payable on security deposits at the prescribed annual rates.

The calculator is available at: http://www.servicealberta.gov.ab.ca/interest-chart.cfm

RETURN OF SECURITY DEPOSITS

The security deposit is considered "delivered" to a tenant on either the date it is handed to the tenant, or his agent, or the date of the postmark. The security deposit refund and statement of account, if there are any deductions, **must** be delivered or postmarked within 10 days of the day the tenant gave up possession of the residential premises.

When a joint tenancy exists, a landlord **must** return the security deposit through a cheque made out to all tenants and **not** to one particular tenant. The RTA is specific in requiring the security deposit to be returned to the tenant, and in the case of a joint tenancy every tenant is equal.

A landlord is entitled to deduct the cost of cleaning above and beyond normal wear and tear as well as for repairing or replacing damaged property to the residential premises. The RTA defines normal wear and tear as the deterioration that occurs over time with the use of the premises, even though the premises receive reasonable care and maintenance.

If there is any rent due and owing at the end of the tenancy, that amount can also be deducted from the security deposit. Some tenants "fail" to pay the rent for the last month of the tenancy, reasoning that the landlord "can use the security deposit to cover the last month's rent". This reasoning is incorrect and will almost always lead to additional cost and expense for both the landlord and the tenant if the matter ends up in court or RTDRS.

If a tenant does **not** pay rent for the last month, a landlord can:

- Serve a tenant with a clear 14-day eviction notice for non-payment of rent,
- Obtain a Distress for Rent through a civil enforcement agency, or
- Request an Order for Possession through the courts or RTDRS.

If the landlord is entitled to be reimbursed for cleaning or repair costs and the security deposit **cannot** cover those costs, the landlord can sue the tenant to recover the cleaning and repair costs. If there are amounts set out in the residential tenancy agreement that are due and owing by the tenant for other costs, such as legal fees, utilities, late fees, etc., they can also be deducted from the security deposit.

A landlord **must**, within 10 days of the tenant giving up possession of the residential premises, either pay the security deposit plus interest to the tenant, or provide a statement of account that shows what the costs were,

or provide an estimate of what the costs are expected to be. A final statement of account and any remaining balance **must** be provided to the tenant within 30 days after the tenancy ends.

The statement of account should show the tenant's name, address of rental premises, amount of security deposit, accrued interest, deductions from the deposit and the balance being returned, if any, or the amount owing if a negative balance.

The landlord has to personally deliver or send by registered, certified or regular mail to the forwarding address of the tenant, the security deposit refund cheque and/or the statement of account. If no forwarding address was left with the landlord, the landlord is responsible for attempting to locate the tenant. The cheque/statement of account is to be mailed to the last known address of the tenant, which may be the rented premises. If the mail is returned as undeliverable, the landlord is to keep the returned item for their records, as it is the tenant's money.

Landlords have to keep security deposit records that show the following for each tenant for at least three years after the expiration or termination of the tenancy:

- The date of receipt of a security deposit by the landlord and the amount of the security deposit,
- The date on which the security deposit was deposited in a financial institution and the name and location of the financial institution,
- Particulars of the interest payable and paid to the tenant,
- Particulars of the disposition of the security deposit under section 46, including the manner in which the security deposit or part of it was delivered to the tenant, and
- Make the security deposit records available for inspection by the Director or an authorized person for the purposes of an inspection or investigation.

A landlord has the right to keep part or all of the security deposit to cover costs that result from the tenant **not** meeting their obligations. If the total costs exceed the security deposit and the tenant does **not** pay them, the landlord can go to court or RTDRS to claim for the money owed.

If the tenant does **not** receive either the security deposit, a statement of account or an estimated statement of account within the 10 days after they leave, the tenant should immediately contact the landlord, in writing (and keep a copy), requesting the security deposit and a statement of account. A tenant may proceed through the courts or RTDRS to get the security deposit back if:

- A tenant still does **not** get anything from the landlord after requesting it, or
- A landlord deducts amounts from the security deposit that were **not** specified in the residential tenancy agreement, or
- A landlord deducts amounts from the security deposit that were for normal wear and tear,
- The requirements for inspection reports were **not** complied with, or
- A landlord can also proceed through the courts or RTDRS for remedy.

INSPECTION REPORTS

A landlord **cannot** make deductions from a security deposit for restoring or repairing costs resulting from normal wear and tear, even if there is a clause saying the opposite in the residential tenancy agreement. The RTA protects the security deposit from deductions for normal wear and tear by requiring landlords to complete move-in and move-out inspection reports. These reports allow the landlord and tenant to determine whether there are repairs or extra cleaning required. If the inspection reports are **not** completed, the landlord **cannot** make deductions from the security deposit to cover cleaning or repair costs. However, the landlord can apply to court or RTDRS to recover the charges previously agreed to by the tenant.

Tenants should leave all smoke detector batteries and light bulbs in working order. A tenant is responsible for ordinary cleaning and for cleaning that is the result of extraordinary or abnormal use. (see Inspection Reports section for Sample Cleaning List). Some examples of damages and deficiencies to the physical condition of rental premises for which deductions can be made when inspection reports are properly completed, are provided on pages 30-31, in the Inspection Reports section.

A landlord **cannot** make any deductions from a security deposit for damage, including cleaning, to the residential premises if the landlord and tenant did **not** complete the move-in and move-out inspection reports. These inspection reports **must** be done within one week before or after the tenant moves in, and within one week before or after the tenant moves out. The inspection report **must** include the statements and applicable signatures as required in the Residential Tenancies Ministerial Regulation before any deduction for damages is allowed from the security deposits.

The landlord can complete the inspection report without the tenant if the tenant either refused to, or did **not** take part in, one of two inspection times suggested by the landlord. The suggested inspection times **must** be on two different days that are **not** holidays, and be scheduled between 8:00 a.m. and 8:00 p.m.

The statements for inspection reports that are mandatory in the Residential Tenancies Ministerial Regulation have to be completed. (see Inspection Reports section).

If a landlord believes the tenant has abandoned the residential premises, the landlord **must** still make a reasonable effort to contact the tenant and arrange the inspection. A record should be kept of the attempted contacts. Some examples of reasonable efforts to contact the tenant are checking with references on the application form, their employer, relatives and neighbors.

If there are rent arrears, the security deposit can be used towards the arrears even if inspection reports have **not** been completed. Other deductions, like NSF fees, that are **not** dependent on inspection reports being properly completed, can also be made.

If a landlord does **not** do the required inspection reports, a landlord can apply to court or RTDRS for a judgment for the debt owed by the tenant.

OBLIGATIONS AND RIGHTS OF NEW LANDLORD

Any person who acquires the landlord's interest in the residential premises is subject to the same rights and obligations concerning security deposits as the previous landlord.

In the event that the landlord of the residential premises changes, the new landlord has to deposit any security deposits that are turned over by the prior landlord, into a new security deposit trust account.

If the prior landlord does **not** turn the security deposits over, the new landlord is still responsible for the security deposit refunds. The RTA requires the new landlord to refund the deposits at the end of the residential tenancy agreement. Failure to receive the security deposits from the prior landlord or owner **cannot** be used as grounds for non-return of a security deposit.

For example, if the apartment building goes into foreclosure and the receiver-manager or new owner takes over, the receiver-manager or new owner is responsible for carrying out a landlord's obligations, including refunding security deposits at the end of the residential tenancy agreement.

A buyer of the residential premises is also fully responsible for the security deposit paid by the tenant.

The new landlord is required, within a reasonable time and at no cost to the tenant, to give the tenant a statement setting out the amount of the security deposit and interest that has accumulated as of the date title transfers.

CANADA DEPOSIT INSURANCE CORPORATION (C.D.I.C. ACT) POOLED TRUST ACCOUNTS

The RTA requires security deposits to be placed into interest bearing trust accounts in Alberta within two banking days of receipt. Only security deposit monies can be placed in this trust account. Security deposit trust accounts with banks, trust companies and loan companies are insured to a limit of $100,000.

The insurance protection for funds deposited in banks, trust companies and loan companies is provided by the C.D.I.C. Act. Funds on deposit are insured up to a limit of $100,000 in the event of failure of a financial institution. The C.D.I.C. Act does **not** cover funds on deposit with a credit union or Alberta Treasury Branch. However the Alberta Government, through the Credit Union Deposit Guarantee Corporation, protects all deposits with credit unions and also unconditionally guarantees all deposits with Alberta Treasury Branches.

Since security deposit trust accounts with banks, trust companies and loan companies are insured to a limit of $100,000, certain procedures **must** be followed to ensure funds are protected if the account balance exceeds $100,000:

1. Inform the bank, trust company or loan company that the trust account is a pooled trust account set up under the RTA. Advise the institution that the account contains funds of more than one party and that these parties change periodically. Whenever a landlord opens a new trust account, they have to provide a similar notification to the bank or trust company.

2. Provide the bank, trust company or loan company with the following information:

   (a) The number of tenants whose money is in the trust account. Identify them by suite or stall numbers, or similar identification, but **not** by name.

   (b) The amount that each tenant has on deposit with the landlord in the trust account.

This notification should be given to the landlord's bank, trust company or loan company on or about April 30th each and every year. This will establish beyond doubt that the trust account is in fact pooled. Because the premium payable to C.D.I.C. is calculated at April 30th each year, it is necessary to provide this information to the bank, trust company or loan company to coincide with that date. Provided that landlords follow this procedure on an annual basis, it is understood that each party who has funds on deposit in the trust account will be protected to the $100,000 limit presently provided under the C.D.I.C. Act.

It is important that landlords follow this process on an annual basis. If the appropriate disclosure has **not** taken place, e.g., been made by the depositor and recorded by the member financial institution, C.D.I.C. will treat the account as part of the depositor's individual holdings, which would be eligible for a cumulative maximum of $100,000 of insurance coverage. If a tenant suffers a loss of funds that are being held on deposit by a landlord in a pooled trust account, the tenant may be able to claim against the landlord for the loss.

FORMS

Accommodation Inspection Report and Statement of Account forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association and the Alberta Residential Landlord Association.

The inspection report has to be in writing and contain everything that the RTA requires. The RTA lists the content for these reports in the Residential Tenancies Ministerial Regulation. Landlords and tenants are free to prepare inspection reports that best suit their particular needs as long as the form has the content from the Regulation. The inspection report **cannot** take away any of the rights, benefits or protections contained in the Act.

RESIDENTIAL TENANCY AGREEMENTS ~ FEES & CHARGES

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f) landlord definition

1(1)(k) rent definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(n), 43(1), 43(2) security deposit

1(1)(t) tenant definition

22(6) assignment or sublease

There are no sections in the Regulations relating directly to "additional fees or charges".

GUIDELINES

The RTA allows a landlord to collect a security deposit providing that it does **not** exceed the sum of the first month's rent.

A security deposit is intended:

- To cover the landlord's costs of repairing or replacing physical damage to premises.
- To cover the costs of cleaning because of extraordinary or abnormal use. This does **not** include cleaning associated with normal wear and tear.
- To cover any arrears of rental payments.
- To cover other costs agreed to by the tenant that are set out in the residential tenancy agreement, such as legal fees, utilities, late fees, etc.

The RTA does **not** prohibit the landlord and tenant from agreeing to fees and charges that are in addition to the security deposit and rent. However, a landlord **cannot** charge an additional "deposit" for a certain privilege, if the total amount of these exceeds the sum of the first month's rent.

Any refundable fee or charge becomes part of the security deposit.

A non-refundable fee or charge that is agreed to in the residential tenancy agreement is **not** subject to the security deposit restrictions. Non-refundable fees **cannot** be deposited into the security deposit trust account.

A landlord should give a tenant a receipt for any payments that are received from the tenant.

A residential tenancy agreement is a contract between the landlord and tenant. (see Residential tenancy agreement section). Like all contracts, the residential tenancy agreement can specify the terms of any additional fees or charges and the circumstances that would give rise to them.

The tenant has the option of refusing to enter into a residential tenancy agreement that contains additional fees or charges. The tenant may negotiate changes to their specific tenancy agreement or may choose to rent elsewhere.

The law relating to contracts is clear that once both parties enter into an agreement, it **cannot** be amended without the agreement of both parties. So, if the tenancy agreement is written, and any additional fees or charges are clearly specified and agreed to by the tenant and are **not** contrary to the RTA, then the tenant is obligated to pay those fees or charges when the circumstances giving rise to them occur. If the tenancy agreement is **not** written, it becomes a matter for the courts or RTDRS to determine, based on the evidence presented to them, whether there was agreement on the additional fees or charges payable by the tenant.

Any fee or charge that a landlord imposes may be subject to review by the court or RTDRS. If a tenant feels the fee or charge is unreasonable they can apply to the court or RTDRS for a remedy.

PRACTICAL APPLICATIONS

Fees or additional charges should reasonably reflect the actual costs that the landlord is seeking to cover. If the fee or charge does **not** reflect an actual cost recovery, or is in excess of the cost recovery, it may well be held by a court to be unenforceable.

Tenancy agreements should state any additional fees or charges, the circumstances that will give rise to them, and whether they are refundable or non-refundable. All fees should be disclosed to tenants when an application and security deposit are taken.

APPLICATION FEES

A landlord may want to charge an application fee. An individual who does **not** want to pay such a fee does **not** have to apply to rent from that landlord.

KEY OR PET FEES

A landlord may want to charge key or pet fees. A landlord may refer to these deposits as additional fees or charges. While these are **not** against the law, if they are refundable to the tenant, they become part of the security deposit amount. The grand total of all of the charges **cannot** exceed the amount of the first month's rent.

REFUNDABLE FEES

Any refundable fee or charge becomes part of the security deposit.

NON-REFUNDABLE FEES

Any non-refundable fee or charge is a contractual agreement between the landlord and the tenant and is **not** subject to the security deposit restrictions. Non-refundable fees **cannot** be deposited into the security deposit trust account.

LATE PAYMENT OF RENT FEES

Some residential tenancy agreements allow for a late payment of rent fees. The charge is usually a daily amount for each day the rent remains unpaid. Based on precedent set by Alberta case law, this fee must reflect the reasonable costs to the landlord otherwise the RTDRS or the courts may deem it to be a penalty and refuse to award it. For example, a bank may charge additional interest if a landlord is unable to make a mortgage payment because the tenant did **not** pay the rent on time. A late payment of the rent fee that would cover the interest charged by the bank could be a valid estimate of liquidated damages, if they exist.

RE-RENTAL FEE

A landlord may charge a re-rental fee if it has been agreed to in the residential tenancy agreement. If the tenant wishes to terminate their tenancy prior to the termination date and, if the landlord is willing to allow it, the tenant will be required to pay the landlord the re-rental fee agreed to in the tenancy agreement.

PETS

Some landlords allow pets in residential premises and usually state the conditions in the residential tenancy agreement.

Other landlords include a "no pet" provision in a residential tenancy agreement because:

- Units in which pets have been kept often require more extensive cleaning, repainting, repair, and replacement of items, than do units where there have **not** been pets; and,
- Other tenants may have allergies to certain animals, or are sensitive to the noise or behaviour of some animals.

There is a difference between a goldfish and a large dog; between a canary and a cat; between a hamster and a python. There are many animals that are kept as pets that are important to their owner that do not, or are not, likely to cause any additional cost or expense to the landlord, or aggravation to other tenants.

Some residential tenancy agreements have clauses prohibiting pets in a unit unless the landlord specifically and in writing allows a particular pet.

If a tenant signs a residential tenancy agreement agreeing to a "no pet" policy, and the tenant brings in a pet later on without the landlord's permission, the tenant is in violation of the contract. This violation could result in the landlord terminating the tenancy.

LANDLORD'S DISTRAINT (DISTRESS)

STATUTORY REFERENCES

The landlord's right to distraint for recovery of rent arrears is a common law right that is covered in the *Civil Enforcement Act* and Regulations. It is therefore **not** mentioned in the *Residential Tenancies Act* (RTA) or the regulations.

GUIDELINES

Distress is a remedy that a landlord can use to recover unpaid rent without having to go to court. The process of distress allows a landlord to hire a civil enforcement agency to seize property on the rented premises that belongs to the tenant in order to recover rent money that is owed. The property can then be sold and the proceeds used to repay the rent and costs incurred by the landlord.

The right to use distress arises as soon as rent is late and the process **must** be carried out in accordance with the law. The landlord **cannot** use this process to recover other money owing by the tenant. The Civil Enforcement Act and Regulations outline the process that **must** be followed in the seizure of goods (effecting a distraint).

1. A seizure of the tenant's personal property may only be made through a civil enforcement agency by a civil enforcement bailiff on instructions from a landlord in the form of a Warrant of Distress.
2. Some property is generally exempt from seizure under the authority of a Warrant of Distress and is specified in the Information for Debtor form. (see #4 below)
3. At the time of a seizure, the tenant **must** be provided with a Notice of Objection to Seizure and Information for Debtor form. The tenant can complete the form if he or she wishes to object to the seizure of some or all of the property. The Notice of Objection to Seizure **must** be completed and served on the civil enforcement agency at the address shown within 15 days of the person being served with the seizure documents.
4. If a tenant objects to the seizure of property, the seized property **cannot** be sold without the court's permission. However, if there is no valid reason for objecting to the seizure, the tenant may be responsible for paying the landlord's costs in taking the matter to court.
5. The landlord has priority over unsecured creditors.
6. If seized property has been pledged as security, but the security interest has **not** been registered in the Personal Property Registry before the seizure, the landlord may have priority over that secured creditor in relation to that property.
7. Generally only the property on the premises at the time of the seizure that belongs to the tenant, and any relative living on the premises as a member of the tenant's family, as well as a person who is liable for rent, may be seized.
8. If there is no objection to the seizure, the seized property may be sold without a court order by any commercially reasonable manner.

9. Distribution of the proceeds of the sale of the seized property is in the following order:
   (a.) All fees and charges for conducting the sale;
   (b.) All fees and charges of the civil enforcement agency that effected the seizure;
   (c.) All costs awarded by the court (if the matter required court application);
   (d.) Rental arrears owed to the landlord; and
   (e.) Any excess is returned to the tenant.

PRACTICAL APPLICATIONS

The common law remedy of landlord's distress is one that dates back almost a thousand years and is still available to the landlord today. Landlord's distress is a way to recover rent owing by a tenant. The landlord is responsible for the seizure costs, however, those costs can be added to the amount owed by the tenant. To satisfy those costs plus the amount owed for the rent arrears may require the seizure and sale of a significant portion of the tenant's property, or seizure and sale of items of significant value.

The tenancy continues during and after the distraint has been effected. This is because in order for the remedy to be available, there **must** be a legal relationship of landlord and tenant. If the tenancy is terminated, there is no such relationship, so the remedy of distress is **not** available to a previous landlord after termination of a tenancy. A landlord taking possession of the residential premises is a clear indication that a tenancy has been terminated.

The most important obligation of the tenant under the residential tenancy agreement and the RTA is to pay the rent in full, when it is due. If rent is **not** paid, for whatever reason, the landlord has the right to terminate the tenancy. In the alternative, landlords may choose to distrain for the arrears of rent owed.

- If the landlord terminates the tenancy, the landlord **cannot** distrain for arrears of rent. The landlord can only bring an action in court for a judgment against the tenant for the amount of the arrears.
- If the landlord decides to distrain for arrears of rent, then the tenancy continues.

A landlord does **not** have to give the tenant any notice or go to court before distraining. Landlords have to use the services of a civil enforcement agency and civil enforcement bailiff to seize the tenant's property.

MORE INFORMATION

Current information about distress for rent owing is available on the Alberta Courts website at

http://www.qp.alberta.ca/documents/publications/civil.pdf.

RENT INCREASES

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(e) Definition of fixed term tenancy

1(1)(f) Definition of landlord

1(1)(i) Definition of periodic tenancy

1(1)(j) Definition of prescribed

1(1)(k) Definition of rent

1(1)(l) Definition of residential premises

1(1)(m) Definition of residential tenancy agreement

1(1)(q) Definition of tenancy month

1(1)(r) Definition of tenancy week

1(1)(s) Definition of tenancy year

1(1)(t) Definition of tenant

1(2) Reference to tenant

13 Implied periodic tenancy

14 Notice of increase in rent

26 Landlord's remedies

37 Tenant's remedies

39 Compensation to tenant

41 Application for remedy to court

42 Order of court

57 Service of notices

58 Satisfaction of service requirement

60 Offences and penalties

70 Ministerial regulations

Ministerial Regulations sections:

3 Rent increase

11 Offence

GUIDELINES

The RTA defines rent as the consideration to be paid by a tenant to a landlord under a residential tenancy agreement, but does **not** include a security deposit.

FOR A NEW TENANT

When a landlord and a tenant enter into a residential tenancy agreement, there is no limit on how much rent they can agree to or the services that rent will include. For example, the rent may include utilities and one parking space.

The RTA does **not** control how much rent can be charged or how much rent can be increased.

FOR AN EXISTING TENANT

Rent **cannot** be increased unless 365 days have passed since the commencement of the tenancy or the last increase in rent, whichever is later. This applies to both periodic and fixed term tenancies. If the 365th day occurs during the term of a fixed term tenancy, the rent **cannot** be increased until that fixed term residential tenancy agreement ends.

Where a tenant does **not** give a landlord a notice of termination after receiving a proper notice of rent increase from a landlord, the tenant is deemed to have accepted the rent increase.

NOTICE REQUIREMENTS

The notice of rent increase **must** be in writing and include all of the following:

- The effective date of the increase,
- The landlord's signature, and
- The date the landlord signed the notice.

A notice of rent increase has to be served on each tenant and **cannot** be posted in the common areas to increase rents for all tenants.

A notice that does not contain all the above mentioned legal requirements is void and the rent can **not** be increased until the landlord serves a notice, which contains all of the legal notice requirements.

CONDOMINIUM CONVERSIONS OR MAJOR RENOVATIONS

If a landlord serves a notice of termination because the residential premises **must** be vacant to convert to condominiums or for major renovations, the rent **cannot** be increased after the notice of termination is served.

PERIODIC TENANCIES INCREASE NOTICES FOR EXISTING TENANCIES

Rent **cannot** be increased under a periodic tenancy unless the tenant has been properly served, before the increase is to take effect, with a written notice that contains all of the required information.

Tenants have to be given the proper period of notice to increase the rent. Depending on the type of periodic tenancy, a landlord is required to provide the following amount of notice:

- For a periodic week-to-week tenancy, at least 12 full tenancy weeks before the date on which the increase is to be effective.
- For a month-to-month tenancy, three full tenancy months before the date on which the increase is to be effective.
- For any other periodic tenancy, 90 days before the date on which the increase is to be effective.

A notice that is **not** served within the proper period of notice is void and the rent **cannot** be increased until the landlord serves a written notice, which contains all the required information, within the proper period of notice.

As an example, for a month-to-month tenancy, the notice has to be served by May 31, 2012 for the rent to increase on September 1, 2012.

If the residential tenancy agreement provides for a period of notice longer than the above, the landlord **must** give at least that longer period of notice before increasing the rent or recovering any additional rent resulting from the increase.

Tenants **cannot** waive their rights to receiving the proper period of notice for rent increases as part of a written or oral residential tenancy agreement. Landlords and tenants can, however, agree to a longer period of notice. This longer period of notice then becomes the minimum time frame for the parties.

FIXED TERM INCREASE NOTICES FOR EXISTING TENANCIES

A fixed term tenancy is a tenancy agreement with a start date and an end date for the tenancy.

A landlord and tenant can negotiate a rent increase for a fixed term tenancy if there has **not** been a rent increase within the previous year (365 days) or since the start of the tenancy, whichever is later. If the 365th day occurs during the term of a fixed term tenancy, the rent **cannot** be increased until that fixed term tenancy agreement ends.

If a fixed term tenancy is for any period of less than a year, the rent **cannot** be increased for that tenant unless 365 days have passed since the start of the tenancy or since the last rent increase, whichever is later.

This applies even if a fixed term tenancy agreement has a clause that states the rent will automatically increase on a date during the fixed term contract.

INCREASE NOTICES FOR EXISTING HYBRID TENANCIES

A hybrid tenancy is a fixed term tenancy for a set period of time that becomes a periodic tenancy after that fixed period.

A hybrid tenancy is a residential tenancy agreement that starts as a fixed term tenancy for a set period of time, e.g., six months or a year, then at the end of the fixed term the tenancy becomes a periodic tenancy, e.g., a month to month tenancy agreement.

A notice of rent increase can be served during the fixed portion of the tenancy to take effect in the periodic portion as long as the above rent increase provisions for periodic and fixed term tenancies are applied. If a hybrid lease has a six month fixed term before becoming a periodic tenancy, the rent can only be increased if there has **not** been a rent increase within the previous 365 days or if 365 days have passed since the start of the tenancy, whichever is later.

FAULTY NOTICES – RENT INCREASE NOTICE NOT BINDING

There is no option to correct a notice that does **not** comply with the legal requirements. A new notice has to be served with all the proper legal requirements.

When tenants receive faulty notices, they are required under common law to serve the landlord with an objection to the rent increase, stating the notice is defective because it does **not** comply with the legislation. (The common law principle requires a tenant who feels wrongly dealt with, to bring their objection to the attention of the landlord as soon as possible.)

The written notice of objection to the faulty rent increase notice should be served on the landlord at any time before the date the rent is due. A copy should be kept by the tenant.

For example, if a notice to increase rent does **not** include the legal requirements, it is void and **not** binding. If a landlord only gave two months notice to increase rent to a monthly periodic tenant, the rent increase is void and **not** binding. The landlord **cannot** simply add a month to the effective date of the increase set out in the notice that is void and **not** binding. A landlord **must** serve a new written notice of rent increase that includes the legal requirements.

A tenant who pays an increase in rent based on a notice that does **not** comply with the requirements may recover the amount of the increase by applying to court or RTDRS for an abatement of unlawful rent. This application should be filed within two years after the unlawful amount was collected. The amount of rent charged may be unlawful if:

- A landlord gave a notice of rent increase that was **not** valid (for example, a tenant was **not** given the proper amount of notice to increase the rent).
- A landlord increased the rent before 365 days have passed since the last rent increase or before 365 days have passed since the commencement of the tenancy.

UTILITIES

Landlords **cannot** require tenants to pay utilities after a tenancy has started if the residential tenancy agreement:

- Contains express wording that the utilities are included in the rent,
- Is silent on who is responsible for utilities, but the landlord has always taken a portion of the rent to pay the utilities.

Landlords and tenants can mutually agree that utilities will no longer be included in the rent.

PARKING FEES

There is no requirement for a rent increase notice when a landlord and tenant agree to add a parking stall to a residential tenancy agreement.

If a residential tenancy agreement states that parking fees are included in the rent, then an increase for parking charges is subject to the rent increase notice provisions.

PRACTICAL APPLICATIONS

A landlord and tenant can mutually agree to changes in the residential tenancy agreement as long as the changes do **not** take away the tenant's rights under the RTA, such as the right to be served a legal notice.

If the increase would cause a hardship, tenants can discuss the possibility of a different rent increase with landlords.

If tenants decide **not** to pay the increased rent, they should take appropriate steps to end the tenancy and vacate the residential premises before the date of the rent increase (see Termination of Tenancy section).

If a tenant stays in the residential premises after the date the rent increase is to be effective, the tenant has accepted the increase.

The law is clear that the landlord is entitled to have the rent paid in full when it is due. If a tenant runs into a problem paying the rent and lets the landlord know beforehand what the problem is, a landlord may let the tenant stay and pay the rent later or over a period of time. But, the landlord is under no obligation to do this.

LANDLORD'S RIGHT OF ENTRY

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f)	Landlord Definition
1(1)(l)	Residential premises Definition
1(1)(t)	Tenant Definition
1(2)	Reference to Tenant
16	Landlord's Covenants
23	Entry of Premises
24	Locks and Security Devices
37	Tenant's Remedies

There are no sections in the Regulations relating directly to the landlord's right of entry.

GUIDELINES

A tenant is entitled to the possession and peaceful enjoyment of the residential premises they are renting. Both the landlord and the tenant have to abide by the residential tenancy agreement and the obligations in the RTA.

The residential premises is the landlord's property and it is also the tenant's home.

The tenant should **not** be disturbed or inconvenienced by the landlord or anyone working for the landlord without a valid reason unless the tenant gives consent or is served with the required notice at least 24 hours before the time of entry.

ENTRY WITH CONSENT

Consent is a voluntary agreement by a person to do something proposed by another person. Consent under the influence of fear or terror does **not** amount to real consent.

A landlord may enter the residential premises with the tenant's consent. If the landlord obtains the consent of the tenant, a notice of entry is **not** required. The time for entry would be arranged at a time convenient to both the landlord and the tenant. Landlords can phone or meet with tenants to obtain consent to enter the residential premises. Consent can be given verbally or in writing.

If the tenant has made the landlord aware of needed repairs, the landlord may want to obtain the tenant's consent at that time to enter the residential premises to complete the repairs. Otherwise, the landlord will be required to give proper notice of entry. Putting any type of consent agreement in writing is a good idea.

ENTRY WITH NOTICE

A landlord may enter the tenant's residential premises without consent if the landlord serves the tenant with a written notice of entry at least 24 hours before the time of entry. Landlord's can enter this way for the following reasons, to:

- Inspect the state of repair of the residential premises including excessive moisture and humidity;
- Make repairs to the premises;
- Control pests as required;
- Show the premises to prospective purchasers or mortgagees;
- Show the premises to prospective tenants after the landlord or tenant has served notice to end a periodic tenancy or in the final month of a fixed term tenancy.

The written notice of entry **must** state the reason for the entry.

If a landlord needs to enter all or several residential premises in a complex, the landlord **must** give each tenant notice of the entry. For example: A landlord needs to enter all units to check the furnaces. A landlord **cannot** just post a notice of entry in the common areas of the building.

A tenant does **not** have to be present when a landlord enters the residential premises. The landlord has the right to enter as long as the landlord gives proper notice.

FORM OF NOTICE

A notice to enter the residential premises **must**:

- Be served on the tenant at least 24 hours before the time of entry,
- Be in writing,
- Be signed by the landlord or the agent,
- State the reason that the landlord is entering the residential premises, and
- State the date and time of entry that complies with the restrictions on holidays and hours of entry.

TIME OF ENTRY

The notice has to state the time, or a period of time, for when the landlord is going to enter. Landlords may only enter with notice between the hours of 8 a.m. and 8 p.m. The timeframe given in the notice is supposed to be of reasonable duration.

The landlord **cannot** enter on a holiday or a Sunday without consent. If the tenant has a different day of religious worship, the tenant **must** give the landlord written notice of that day. A landlord can then enter on a Sunday, but **not** the day that is the tenant's day of religious worship.

The date and time of entry may be expressed as a period of time of reasonable duration, which **must** begin and end at a specified time.

Landlords have the right to maintain their properties through inspections. Landlords should take into consideration the needs of tenants.

Most landlords are flexible and considerate in entering rental premises and work with their tenants to make mutually satisfactory arrangements. Likewise, most tenants are understanding when it comes to entry by the landlord. If notices give numerous times of entry, the inconvenience could rise to such a level that the notices would be unreasonable. Notices that cover multiple days are **not** allowed. Each entry requires its own written notice.

Determining a reasonable duration involves balancing the tenant's right to privacy and the landlord's rights. While it may be convenient for a landlord to serve notices to enter residential premises over many hours or days, convenience is **not** the same thing as reasonableness. Reasonable duration is determined on the specifics of the situation. Laws have been moving in the direction of increased privacy protection.

When a tenant gives a notice to vacate, there needs to be some flexibility allowed to ensure that the landlord can show the property. While the tenant has a right to privacy, it's important to recognize the landlord's right to fill the vacancy.

A tenant has the right to peaceful enjoyment of rented premises. Ultimately, a court or RTDRS will balance the inconvenience to the tenant and landlord in determining what is reasonable. As landlords don't always rent and sellers don't always sell to the first person to come along, it may take several days and several showings before a property is rented or sold. The main point is that the sooner the place is rented or sold, the sooner the showings will cease.

ENTRY WITHOUT NOTICE

The landlord may enter the residential premises without permission and without giving the tenant any notice for two reasons:

- If the landlord believes there is an emergency;
- If the landlord believes the tenant has abandoned the residential premises.

ENTRY FOR EMERGENCIES

An emergency could be defined as an unforeseen combination of circumstances that calls for immediate action. Such things as smoke, unusual odors, flames, water damage, broken windows, heat or power failure, smoke detector alarm sounding and threat to life or property are considered emergencies.

A landlord may enter the residential premises without consent or notice when they believe an emergency exists. If an emergency happens when a tenant is **not** home, landlords should phone the tenant, ring the doorbell and knock on the entrance to the premises before using pass keys. Contact attempts should be documented.

If the tenant changed the lock and did **not** give the landlord a key, emergency personnel can remove the lock or the door. The tenant has committed a breach of the RTA by **not** providing the landlord with a new key. (see Security: Keys and Locks section).

PRACTICAL APPLICATIONS

ABANDONMENT

There are times when the tenant may be away for an extended period of time, but has **not** actually abandoned the residential premises.

A tenant may vacate the residential premises without giving notice to the landlord and while the tenancy is still in effect.

If there has been no communication from the tenant, the landlord **must** determine if the tenant has abandoned the residential premises. To be safe, the landlord should serve the 24 hour entry notice.

Examples of the kinds of things that might cause the landlord to believe that a tenant has abandoned the residential premises are:

- Rent has **not** been paid;
- Mail addressed to the tenant is still coming to the residential premises without being picked up, or alternatively is no longer coming;
- The utilities (if in the tenant's name) have been disconnected;
- Newspapers have accumulated.

Within reason, a landlord could talk to neighbours, friends, relatives, tenant's employer or references given by the tenant to see whether they can provide information.

If a tenant abandons the residential premises before the end of the tenancy, the landlord may still be entitled to the rent that is owed for the remainder of the tenancy agreed to in the residential tenancy agreement.

The landlord **must** take reasonable steps to re-rent the unit. If the landlord rents the premises to a new tenant, the old tenant is no longer responsible to pay the rent from the date the new tenant moved in until the date that their residential tenancy agreement was supposed to have ended.

If a tenant left some belongings in the residential premises and the landlord believes on reasonable grounds that the abandoned goods have a total market value of less than $2,000, the landlord may dispose of the goods. If the goods have a value of more than $2,000, the landlord **must** store the goods for a period of 30 days. After the 30 days, the landlord can sell the goods at a public auction, or with the approval of a court by private sale. There are record keeping requirements that the landlord **must** abide by when there are abandoned goods. Section 31 of the RTA speaks to abandonment.

FREQUENCY OF ENTRY TO INSPECT

The RTA requires inspection reports to be completed at the beginning and the end of the tenancy. However, good business practices suggest that an inspection should be conducted at least once a year in a long-term tenancy. Proper written notice of entry has to be provided by the landlord.

OBJECTING TO NOTICE TO ENTER

The tenant has the right (under common law) to object to the day or time the landlord wants to enter if it is inconvenient. However, the tenant should give the landlord another reasonable, alternate day or time to enter the premises. A tenant should have a valid reason for changing the time of entry. The fact that a tenant **cannot** be at home is **not** a valid reason for changing the time. If proper notice to enter is provided, the landlord does not have to accept the tenant's objection.

The common law principle requires a tenant who feels wrongly dealt with to bring their objection to the attention of the landlord as soon as possible.

If the tenant thinks the landlord is being unreasonable, the tenant can apply to the court or RTDRS for a remedy.

FORMS

Notice of entry forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association and the Alberta Residential Landlord Association.

Since the RTA does **not** prescribe a particular form of notice of entry, landlords and tenants are free to prepare whatever form best suits their particular needs so long as that notice conforms to the requirements. Any agreement or notice **cannot** take away any of the rights, benefits or protections contained in the RTA.

SECURITY - KEYS & LOCKS

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f) landlord definition

1(1)(h) overholding tenant definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(t) tenant definition

1(2) reference to tenant

16 landlord's covenants (obligations)

23 entry of premises

24 locks and security devices

31 abandoned goods

34 order for recovery of possession

34.1 requirements respecting eviction

There are no sections in the Regulations relating directly to security - keys and locks.

GUIDELINES

At the beginning of a tenancy, the landlord has to give the tenant a key for the residential premises, main doors, mail box and any other common areas, such as recreational or laundry rooms that the tenant has the right to access. The tenant **must** return all the keys at the end of the tenancy, including any extra keys the tenant had cut at their own expense. This helps keep the premises secure.

The RTA says that a landlord or a tenant shall **not** change or add to the locks on doors to the residential premises without the agreement of the other party. The agreement can be verbal or in writing.

However, the RTA also includes a provision that allows a landlord to change or add to the locks on doors giving access to the residential premises as long as the landlord gives a key to the tenant as soon as the change is made.

If a landlord consents to a tenant's request to change or add to the locks, the tenant has to give the landlord a key as soon as the change or addition is made.

A tenant is allowed to install a security device, such as a chain lock, that can only be used when the tenant is inside the residential premises. If the tenant adds this kind of security device, the tenant can do the following when the tenancy ends:

1. Leave the device installed and it becomes the property of the landlord, or
2. Remove the device and repair any holes in the door and the door frame. If damage occurs due to the installation of the device, the tenant is responsible for the repairs.

Tenants are responsible for any damage or disturbance that is caused by the people who use the tenants' keys to enter the residential premises.

If the tenant fails to return the keys at the end of a tenancy, the landlord may change the lock and charge the tenant for the cost of the change.

PRACTICAL APPLICATIONS

If a tenancy has come to an end, but the tenant has **not** yet moved out, the landlord **cannot** change the locks to prevent the tenant from entering the residential premises. The landlord **cannot** change the locks until the tenant has given up possession of or abandoned the residential premises.

If the tenant does **not** move out at the end of the tenancy, the tenant becomes an overholding tenant. The landlord **must** apply to court or RTDRS for an Order for Possession to have the tenant give up possession of the premises. If the tenant still doesn't give up possession, a civil enforcement agency has the authority to evict a tenant, but only in accordance with an Order for Possession. The locks **cannot** be changed until the tenant is actually evicted from the residential premises.

If a landlord determines that a tenant has abandoned the residential premises, the landlord may change the locks to ensure that the residential premises and the tenant's belongings, if any, are secure.

If tenants want to add or change locks to increase security, they may do so if they have the landlord's permission and if they give the landlord a key for the new lock. The landlord has to be able to enter the residential premises at all times in case there is an emergency, such as a fire.

Tenants should **not** lend other people their keys or give out copies of their keys. Tenants are responsible for any damage or disturbance caused by the people who use the tenants' keys to enter the residential premises.

In summary, if a landlord adds to or changes locks without the consent of the tenant, they have to immediately provide a key to the tenant. If a tenant has the landlord's consent to add to or change locks, the tenant **must** immediately provide the landlord with the new key. In either case, if a key is **not** provided to the other party, as soon as possible, after a lock has been added or changed, an offence has been committed under the RTA. A written complaint has to be made to Service Alberta before they can take action against the party who added to or changed the lock. (see "Filing a Consumer Complaint with Service Alberta" tipsheet).

TERMINATION OF A TENANCY

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(e) fixed term tenancy definition

1(1)(f) landlord definition

1(1)(h) overholding tenant definition

1(1)(i) periodic tenancy definition

1(1)(j) prescribed definition

1(1)(k) rent definition

1(1)(l) residential premises definition

1(1)(m) residential tenancy agreement definition

1(1)(p) substantial breach definition

1(1)(q) tenancy month definition

1(1)(r) tenancy week definition

1(1)(s) tenancy year definition

1(1)(t) tenant definition

1(2) reference to tenant

5 notice of termination of periodic tenancy

6 termination by landlord

7 notice to terminate weekly tenancy

8 notice to terminate monthly tenancy

9 notice to terminate yearly tenancy

10 form of notice

11 notice to terminate tenancy of employee

12 notice to terminate for condominium conversion

13 implied periodic tenancy

15 notice to terminate **not** required (to end fixed term tenancies)

16 landlord's covenants (obligations)

20 time of expiration or termination

21 tenant's covenants (obligations)

22 assignment and sublease

26 landlord's remedies

27 repudiation of tenancy

28 termination for substantial breach by landlord

29 termination for substantial breach by tenant

30 termination of tenancy for damage or assault

32 recovery of damages

33 notice to vacate (48 hour notice to non-tenant)

34 order for recovery of possession

35 notice of default required

36 notice to vacate (14-day notice to non-tenant)

37 tenant's remedies

38 possession unobtainable

39 compensation to tenant

40 frustration of tenancy agreement

41 application for remedy to court

42 order of court

47.3 termination of tenancy for domestic violence

57 service of notices, etc.

58 satisfaction of service requirement

60 offences and penalties

70 ministerial regulations

Ministerial Regulations sections:

2 termination of periodic tenancies

11 offence

Form 1 Landlord's notice to tenant to terminate periodic tenancy

Form 2 Tenant's notice to landlord to terminate periodic tenancy

Form 3 Landlord's notice to tenant to terminate for substantial breach

Form 4 Landlord's notice to tenant 24-hour notice to terminate tenancy

Form 5 Landlord's notice to vacate to persons who are **not** tenants

Form 6 Tenant's notice to landlord to terminate for substantial breach

Form 7 Certificate Confirming Grounds to Terminate Tenancy

GUIDELINES

Tenants and landlords may terminate a residential tenancy agreement for a variety of reasons. It may be because there has been a breach of the tenancy agreement, because the tenant has found another place to live or the landlord wants to end the tenancy for a prescribed reason. Regardless of the reason, proper notice is required to terminate a tenancy.

A landlord **cannot** terminate a residential tenancy agreement because the tenant made an application or filed a statement under the RTA, made a complaint, assisted in an investigation or inquiry, or gave evidence at a hearing under the RTA or the *Public Health Act*. A written complaint has to be made to Service Alberta before the department can take action against a landlord. (see "Filing a Consumer Complaint with Service Alberta" tipsheet).

If an order to vacate is issued under Alberta's health and safety laws, the tenancy may be terminated. These orders take precedence over the RTA.

The RTA does **not** restrict a landlord from terminating a tenancy during the winter months.

PRACTICAL APPLICATIONS

The RTA balances the rights of landlords to remove tenants or non-tenants who have committed a substantial breach with the rights of tenants to remain in the premises.

Tenants **must** be served a written notice that states the reason for the termination and the date that the tenancy is to end. Tenants have the opportunity to object to the reason given for the termination for a substantial breach unless the notice is for unpaid rent. If the tenant objects to the reason, the landlord has to go to court or RTDRS for an order terminating the tenancy and to get possession of the premises. Both parties can present their side of things to the court or RTDRS.

It is important to remember that regardless of who has committed a substantial breach, a landlord and tenant can agree between them to end the tenancy by a certain date and save the expense of taking the matter to court or RTDRS.

Not surprisingly, the largest number of terminations of tenancies by landlords arises from the tenant's failure to pay the rent, in full, when it is due. This sometimes happens when tenants mistakenly think they can withhold the rent to force the landlord to do something such as make some repairs to the premises.

The law is very clear that the landlord is entitled to have the rent paid in full when it is due. If a tenant runs into a problem paying the rent and lets the landlord know beforehand what the problem is, a landlord may let the tenant stay and pay the rent later or over time. But, the landlord is under no obligation to do this.

Even if a landlord is sympathetic and allows a tenant additional time to come up with the rent, the landlord may charge a late payment fee (if such a fee has been agreed to in the residential tenancy agreement). If late payment of rent happens frequently, the landlord can go directly to court or RTDRS to seek termination of the tenancy or can serve the tenant with a 14 clear day notice to terminate the tenancy on the basis that the tenant has committed a series of breaches, the cumulative effect of which amounts to a substantial breach.

A landlord is **not** allowed to change the locks to force a tenant out of the residential premises or to otherwise deny access to the tenant while the tenant still lives in the residential premises.

A landlord is **not** allowed to discriminate against a tenant on the basis of the tenant's income.

MOVING OUT

When a tenant wants to end a periodic tenancy, the tenant **must** give the landlord a notice saying they plan to move out.

The tenant's notice to the landlord **must**:

- Be in writing
- Give the address of the residential premises,
- Be signed by the tenant, and
- Set out the termination date.

A tenant has to move out by noon on the last day of the tenancy. The landlord and tenant can make an agreement to a different time. This does **not** apply if a landlord has served a tenant a 24-hour notice to terminate the tenancy for damage or assault. If the notice to terminate is for damage or assault, the tenant has to move out at the time stated in the notice.

How much notice is required to terminate a tenancy?

❖ *SECTION 6 - TERMINATION OF PERIODIC TENANCY BY LANDLORD FOR PRESCRIBED REASONS*

If a landlord needs to do major renovations that require the premises to be empty, the landlord **must** give the tenant 365 days notice to terminate the periodic tenancy.

Note: Major renovations do **not** include painting, replacing of floor coverings, or routine maintenance.

No rental increases are allowed during that year.

If the landlord gives less than 365 days notice to terminate a tenancy so major renovations can be done or increases the rent after giving the notice, the landlord has committed an offence under the RTA. A written complaint can be made to Service Alberta before they can take action against the landlord. (see "Filing a Consumer Complaint with Service Alberta" tipsheet).

If the tenant has **not** committed a substantial breach, a landlord can only end a periodic tenancy for the following reasons:

- The landlord or a relative of the landlord intends to live in the residential premises.
- The landlord has sold the residential premises and the purchaser or a relative of the purchaser wants to move in.
- The landlord has sold a detached or semi-detached dwelling unit or condominium unit, and the purchaser has requested in writing that the tenancy be terminated.
- The landlord intends to demolish the building.
- The landlord intends to use the residential premises for a non-residential use, such as business purposes.
- The landlord is an educational institution and the tenant is no longer a student or will no longer be a student at the termination date specified in the notice of termination.

The landlord's notice to the tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord,
4. State the reasons for the termination, and
5. Set out the termination date.

If the tenant moves out of the residential premises as required by the notice given for one of the prescribed reasons listed above, and the landlord does **not** use the premises for that reason, the landlord has committed an offence under the RTA. A written complaint can be made to Service Alberta (see "Filing a Consumer Complaint With Service Alberta" infosheet). A tenant may pursue a landlord for compensation through court or RTDRS.

If a tenant wants to move out of the residential premises before the termination date set out in the notice from the landlord, proper written notice to vacate **must** be served by the tenant to end the tenancy.

❖ *SECTION 7 - TERMINATION OF WEEKLY PERIODIC TENANCY*

The landlord and tenant **must** give each other one week's written notice. Notice is to be served on or before the first day of the tenancy week, with the termination to be effective on the last day of the tenancy week.

❖ *SECTION 8 - TERMINATION OF MONTHLY PERIODIC TENANCY*

A landlord **must** give the tenant three months written notice. Notice is to be served on or before the first day of the three-month notice period.

An example: Joe has a month-to-month tenancy. It begins on the first day of the month and ends on the last day of the month. If Joe's landlord wants Joe to move out by September 30, the landlord would have to give Joe notice on or before July 1.

A tenant **must** give the landlord one tenancy month's written notice. Notice is to be served on or before the first day of the one-month notice period.

An example: Joe has a month-to-month tenancy. It begins on the first day of the month and ends on the last day of the month. Joe decides to move out by September 30. He **must** give the landlord notice on or before September 1.

❖ *SECTION 9 - TERMINATION OF YEARLY PERIODIC TENANCY*

A landlord **must** give the tenant 90 days written notice to be effective on the last day of the tenancy year.

A tenant **must** give the landlord 60 days written notice to be effective on the last day of the tenancy year.

❖ *SECTION 11 - TERMINATION OF EMPLOYEE TENANTS*

A landlord or tenant may end a periodic tenancy with notice if the employment of the tenant is terminated. The notice **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the party giving the notice,
4. State the reasons for the termination of the tenancy, and
5. Set out the date that the tenancy will terminate.

How much notice has to be given to terminate the tenancy of an employee tenant?

The amount of notice a landlord or tenant **must** give to terminate the tenancy has to be the longest of:

- The amount of notice that is required by law to terminate the tenant's employment,
- The amount of notice to terminate the employment that has been agreed to by the landlord and the tenant, or
- One week.

If the landlord is terminating the tenancy because of significant damage, assault, or threats of assault, the landlord can apply to the court or RTDRS for an order terminating the tenancy or the landlord can serve the tenant with a notice to terminate at least 24 hours before the termination date and time.

❖ *SECTION 12 - TERMINATION FOR CONDOMINIUM CONVERSIONS*

A landlord may end a periodic tenancy with notice if the landlord is converting the residential premises into a condominium.

How much notice to terminate does a landlord have to give a tenant for condominium conversions?

If the premises **must** be vacant because a landlord intends to convert the rental premises to a condominium unit, the landlord has to give at least 365 days written notice to the tenant before the day the tenancy is to end. The landlord's notice to the tenant **must**:

- Be in writing,
- Give the address of the residential premises,
- Be signed by the landlord,
- State the reason for the termination, and
- Set out the termination date.

No rental increases are allowed during that year.

If the landlord gives less than 365 days notice to terminate a tenancy when converting the premises into a condominium or increases the rent after giving the notice, the landlord has committed an offence under the RTA. A written complaint can be made to Service Alberta. (see "Filing a Consumer Complaint With Service Alberta" infosheet). A tenant may pursue a landlord for compensation through court or RTDRS.

❖ *SECTION 15 - TERMINATION OF FIXED TERM TENANCIES*

A fixed term tenancy ends on the day specified in the residential tenancy agreement, unless both parties agree to an early termination. For example, if the fixed term is from January 1 to December 31, the tenancy automatically ends on December 31. Unless the tenant and landlord make other arrangements, the tenant has to move out by noon on December 31.

The RTA does **not** require any notice to be given by a landlord or tenant to end a fixed term tenancy. It is courteous if the tenant or the landlord provides a reminder before the end of the tenancy agreement.

A landlord is **not** obligated to accept a tenant's notice to terminate a fixed term tenancy before the end of the fixed term, but may agree to an early termination, or an assignment or sublease. A landlord **must** have reasonable grounds to refuse an assignment or sublease. The RTA prohibits a landlord from charging a fee for giving consent to an assignment or sublease of a residential tenancy agreement.

If a tenant ends a fixed term tenancy before the termination date, the landlord is entitled to be paid rent from the tenant until the residential tenancy agreement ends. However, the landlord **must** take reasonable steps to re-rent the unit. If the landlord rents the premises to a new tenant, the old tenant is no longer responsible to pay the rent from the date of the new tenancy.

At the end of the fixed term agreement, the landlord and tenant may both want to continue the tenancy. At this time they can negotiate a new residential tenancy agreement that could include a change in the rent amount, security deposit amount and the conditions of the tenancy. This agreement can be a new fixed term or be changed to a periodic tenancy.

If the parties do **not** notify each other of their intention to continue the tenancy or to end the tenancy, difficulties may arise. For example, the landlord may be expecting the tenant to leave at the end of the fixed term and may have plans for the premises.

The RTA says that if, at the end of the fixed term tenancy, the tenant doesn't move out and the landlord accepts the tenant staying on and continuing to pay rent, then, unless there are agreements or facts in the arrangement that indicate otherwise, the tenancy switches to a periodic tenancy.

The periodic tenancy becomes a monthly periodic tenancy if the fixed term tenancy was for a month or more.

If the fixed term tenancy was for a fixed term of less than one month, then the periodic tenancy becomes a weekly periodic tenancy.

Some fixed term tenancy agreements include a provision for renewal of the tenancy for an additional fixed term at the end. Such provisions usually include a requirement for the tenant and landlord to provide a period of written notice to each other about whether they wish to renew for a further fixed term.

❖ *SECTION 28 - TERMINATION OF TENANCY FOR SUBSTANTIAL BREACH BY LANDLORD*

Whether the tenancy is fixed term or periodic, the RTA states that a landlord commits a substantial breach when:

- The premises is **not** kept in the condition that meets the minimum housing standards under the public health act and regulations, and
- An executive officer issues an order under section 62 of the *Public Health Act*, and
- The landlord has **not** complied with the order.

How much notice to terminate does a tenant have to give a landlord who commits a substantial breach?

If the tenant believes on reasonable grounds that the landlord has committed the above substantial breach, a tenant can apply to court or RTDRS to end the tenancy or can serve the landlord with a notice to terminate at least 14 clear days before the stated termination date. The notice **must**:

1. Be in writing,
2. Give the address of the premises,
3. Be signed by the tenant,
4. State the reasons for the termination, and
5. Set out the termination date.

A 14 clear day notice means that the day the notice is served on the landlord and the termination date do **not** count as part of the 14 days.

The notice to terminate is **not** binding if, within seven days from the date a landlord receives the notice to terminate from a tenant, the landlord serves the tenant with a written notice of objection. The only reasons the landlord can object are:

- The landlord has actually complied with the order, or
- The landlord has been granted a stay of the order.

A NOTICE OF OBJECTION MUST BE PROPERLY SERVED FOR IT TO BE EFFECTIVE.

❖ *SECTION 29 - TERMINATION OF TENANCY FOR SUBSTANTIAL BREACH BY TENANT*

Whether the tenancy is fixed term or periodic, the tenant **must**:

- Pay the rent in full when it is due.
- Not to interfere with the landlord or the landlord's employees, or interfere with or disturb other tenants in the residential premises or in the common areas, e.g. playing loud music well into the night or being noisy.
- Not perform illegal acts or carry on any illegal business or occupation in the residential premises or in the common areas.
- Not to do anything, or fail to do anything, that could endanger anyone in the building or in the common areas.
- Not cause significant damage to the residential premises or the common property.
- Maintain the residential premises and all property included in the residential tenancy agreement and keep it reasonably clean.
- Vacate the residential premises when the tenancy is ended.

If a tenant does **not** live up to the responsibilities in the residential tenancy agreement or under the RTA, they have committed a "substantial breach" and the landlord has grounds to terminate the tenancy.

❖ *SECTION 47.3 TERMINATION OF TENANCY FOR DOMESTIC VIOLENCE*

In August 2016, the *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act,* Termination of Tenancy (Domestic Violence) Regulation, and amendments to the RTA Ministerial Regulation, were proclaimed. These changes to the RTA allow victims of domestic violence to end a tenancy early and without financial penalty.

This legislation applies in cases where if the tenancy continues:

- The tenant's safety is at risk;
- A dependant child's safety is at risk; or
- A protected adult's safety is at risk.

The Amendment Act establishes a Designated Authority to receive an application from, and issue a certificate, to a victim of domestic violence. This certificate confirms that there are grounds to terminate the tenancy and is used by the tenant to give notice to their landlord that they are terminating the tenancy.

The Designated Authority can also help individuals applying for a certificate to find other supports, such as emergency shelters and financial supports for victims of domestic violence. The Ministry of Human Services has been appointed the Designated Authority for the purposes of the legislation and contact information for the Designated Authority is provided on the final page of this handbook.

UNDERSTANDING DOMESTIC VIOLENCE

Domestic violence includes any of the following:

PHYSICAL ABUSE	EMOTIONAL/PSYCHOLOGICAL ABUSE
• The use of physical force that may result in pain or injury. This includes pushing, shoving, kicking, slapping, biting, strangling, hitting, etc. • Being locked out or denied access to the home • Denied help when ill, injured or pregnant • By physical force not being allowed to leave • Weapons or objects being used against an individual • Abandoned in a dangerous situation	• Threats to harm an individual, their family or pets • Manipulation through lies and contradictions • Being ridiculed for an individual's beliefs, race, heritage, class, religion or sexual orientation • Being convinced they are to blame for the abuse • Stalking
SEXUAL ABUSE	**ECONOMIC ABUSE**
• Forced to have sex or watch sexual acts • Forced or pressured to perform sexual acts or have sexual acts performed on them • Forced to have sex after a physical assault, when they are ill, or as a condition of the relationship	• Partner controls all of the finances • Prevented from getting or keeping a job or from going to school • Denied access to bank accounts, credit cards or vehicle • Limited access to health, prescription or dental insurance

DOMESTIC VIOLENCE IS COMMITTED BY:

- A current or past spouse or partner
- A person they are dating or have dated
- The biological or adoptive parents of one or more children with that person, regardless of marital status
- A person that has care and custody over them pursuant to an order of a court

INFORMATION FOR TENANTS

If you are a victim of domestic violence, there are steps you can take to end your tenancy:

1. Apply for a certificate through the Designated Authority in Human Services confirming termination of the tenancy. To issue the certificate, the Designated Authority will require **one** of the following documents:
   - A copy of an emergency protection order or Queen's Bench protection order, a restraining order, a peace bond, or another court order that stops the alleged perpetrator from contacting the tenant; or
   - A statement from a professional affirming the tenant has reported a risk to their safety, the safety of a dependent child or protected adult. For example, you can ask for a statement from a doctor or nurse. Below is a full list of professionals who can provide a statement.

a) A regulated member of the:
   - College of Physicians and Surgeons of Alberta
   - College and Association of Registered Nurses of Alberta
   - Alberta College of Social Workers
   - College of Alberta Psychologists
   - College of Registered Psychiatric Nurses of Alberta

b) A police officer or Royal Canadian Mounted Police (RCMP)

c) An individual employed by an organization who:
   - assists individuals by providing accommodation in an emergency or transitional shelter because of homelessness or abuse; or,
   - provides support for victims of crime (such as Victims Services).

After receiving one of these documents, the Designated Authority may issue a certificate.

2. Provide your landlord with the certificate and a written notice to terminate the tenancy. You must provide at least 28 days notice. The notice must be in writing, be signed by the tenant, set out the termination date, and be given no later than 90 days after the certificate is issued. The notice must be served personally or by registered mail.

Once these steps have been completed, the tenancy agreement will be terminated on the date stated in the notice. Tenants are still responsible for paying rent during the period of notice and can request that the landlord apply the security deposit as a payment of rent for the notice period.

INFORMATION FOR LANDLORDS

The following is important information landlords should be aware of:

- A landlord must ensure that any information received from or about a victim of domestic violence is kept confidential unless the landlord is authorized by the tenant to disclose that information. For example:
  - A landlord cannot talk to other tenants about the victim's situation or why they are moving out.
  - A landlord may be required to disclose information in connection with an investigation or prosecution.
- The tenant is still required to pay rent during the notice period (at least 28 days). If requested by the tenant, a landlord must apply the security deposit as a payment of rent for the notice period.
  - This does not prevent a landlord from seeking reimbursement for previous rent or utility arrears, or costs for damage to premises.
- If other tenants are listed on the current tenancy agreement, these tenants would be notified of the termination by the landlord. The tenancy agreement is terminated for all tenants living in the rental unit. As the landlord, you can choose to enter a new rental agreement with the remaining tenants.

A landlord may apply to court or the Residential Tenancy Dispute Resolution Service (RTDRS) to set aside a notice to terminate only on the following grounds:

- The tenant did not provide proper notice of termination. Tenants are required to provide at least 28 days notice along with the signed certificate from the designated authority confirming there are grounds for terminating the tenancy.
- The tenant does not properly serve the notice and certificate to the landlord in person or by registered mail.
- The notice is not in writing, or not signed by the tenant, or does not include the date that the tenancy will terminate.
- The notice to terminate is served more than 90 days after the date on which the certificate was issued.

To file a dispute or claim damages, you may apply to the RTDRS or provincial court.

For more information about your rights and responsibilities as a landlord, call the Service Alberta Contact Centre at 1-877-427-4088.

INFORMATION FOR TENANTS LIVING AT THE SAME RESIDENTIAL PREMISES AS A VICTIM

When a lease is terminated due to a certificate being issued, it means the tenancy agreement of everyone living with the victim will be terminated too. The victim is not responsible for telling other tenants that the tenancy is being terminated, but can if they feel comfortable doing so. The landlord may establish a new lease with the other tenants, but does not have to. It is recommended that the other tenants consult the landlord respecting entering into a new tenancy agreement if they would like to remain living at the premises.

HOW MUCH NOTICE TO TERMINATE DOES A LANDLORD HAVE TO GIVE A TENANT WHO COMMITS A SUBSTANTIAL BREACH?

If a tenant commits a substantial breach, the landlord can apply to court or RTDRS for an order terminating the tenancy, or can serve the tenant with a notice to terminate at least 14 clear days before the termination date stated in the notice. The landlord's notice to the tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord or agent,
4. Separately set out the rent that is due and any more rent that may become due during the notice period,
5. State the reason for the termination, and
6. Set out the termination date.

The landlord's notice to terminate is **not** binding if the tenant serves the landlord with a written notice setting out the reasons why the tenant objects to the termination notice.

- The tenant's notice of objection has to be served before the termination date set out in the notice to terminate.
- A tenant **cannot** object to a termination notice that is for non-payment of rent.
- A tenant's notice of objection **must** be properly served for it to be effective.
- A termination notice has to give the tenant 14 clear days before the tenant has to leave the residential premises. The day the notice is served on the tenant and the day the tenant moves out do **not** count as part of the 14 days.

If the landlord's notice to terminate the tenancy is for non-payment of rent, the notice to terminate has to state that the tenancy will **not** be terminated if the tenant pays the outstanding rent owing on or before the termination date set out in the notice.

The notice to terminate is **not** binding and is no longer effective if the tenant pays the rent before the 14 days are up.

If a landlord gives notice and the tenant does **not** move out, the landlord has to apply for a court or RTDRS order to terminate the tenancy and get possession of the residential premises. If the tenant still does **not** move, the landlord should approach the Court of Queen's Bench to recover of the possession. Further information on this procedure is available from the Court of Queen's Bench.

A civil enforcement agency has the authority to evict an occupant from the residential premises. No one other than a civil enforcement bailiff is allowed to remove the tenant or their belongings. The landlord will be required to produce a copy of the Order of Possession, as well as the affidavit of service to the civil enforcement agency.

❖ *SECTION 30 - TERMINATION OF TENANCY FOR DAMAGE OR ASSAULT (24-HOUR NOTICE)*

A tenant **must not** do, or permit significant damage to be done to the property, or physically assault, or threaten to physically assault, the landlord (or the landlord's employee or agent) or another tenant.

HOW MUCH NOTICE TO TERMINATE DOES A LANDLORD HAVE TO GIVE A TENANT FOR DAMAGE OR ASSAULT?

The landlord can apply to the court or RTDRS for an order terminating the tenancy or the landlord can serve the tenant with a notice to terminate at least 24 hours before the termination date stated in the notice. The landlord's notice to the tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord,
4. State the reason for the termination, and
5. Set out the termination date and time.

If a landlord is apprehensive that even more damage, or further assaults, are likely to occur in the 24-hour notice period, the landlord can go to court or RTDRS seeking an order for the immediate possession of the residential premises and removal of the tenant. The landlord should have evidence to present.

If a landlord serves a 24-hour notice, and the tenant does **not** vacate the residential premises within the notice period, the landlord **must**, within 10 days of the date of termination specified in the notice, apply to court or RTDRS for an order to end the tenancy and to get vacant possession of the residential premises. If the landlord does **not** make the court application within the 10 days following the date of termination, then the 24-hour notice is **not** binding. In other words, the landlord is considered to have never given a notice to terminate.

❖ *SECTION 33 - NOTICE TO VACATE TO NON-TENANT (48-HOUR NOTICE)*

If the tenant has abandoned the residential premises (repudiation of tenancy), a landlord can serve a notice to vacate to the person(s) **not** authorized to live there.

The landlord may still be entitled to the rent that is owed for the remainder of the tenancy agreed to in the residential tenancy agreement, if

- The tenant abandons the residential premises before the end of the tenancy,
- The tenant does **not** give the proper notice to end a periodic tenancy,
- The tenant moves out before the end of the fixed term tenancy.

HOW MUCH NOTICE TO VACATE DOES A LANDLORD HAVE TO GIVE AN UNKNOWN PERSON IF A TENANT HAS ABANDONED THE PREMISES?

The landlord can serve the unknown person with a 48-hour notice to vacate. The landlord's notice to the unknown person **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord or the landlord's agent, and
4. Set out the termination date and time.

If the unknown person does **not** vacate within the 48 hours, the landlord can apply to court or RTDRS for an order terminating the tenancy of the tenant who abandoned the residential premises and for recovery of possession from the unknown person who is living there. This does **not** prevent the landlord from applying to court or RTDRS to recover damages from the tenant.

❖ *SECTION 36 - NOTICE TO VACATE TO NON-TENANT (14-DAY NOTICE)*

A landlord can serve a notice to vacate to an unauthorized person living in a residential premises occupied by a tenant.

HOW MUCH NOTICE TO VACATE DOES A LANDLORD HAVE TO GIVE AN UNAUTHORIZED PERSON IF THE RESIDENTIAL PREMISES ARE OCCUPIED BY A TENANT?

The landlord can serve the non-tenant with a 14 clear day notice to vacate. The landlord's notice to the non-tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord, and
4. Set out the termination date and time.

If the non-tenant does **not** vacate within the 14 days, the landlord can apply to court or RTDRS for an order for the non-tenant to vacate the residential premises.

The notice to vacate has to give the non-tenant 14 clear days before the non-tenant leaves the residential premises. The day the notice is served on the non-tenant and the day the non-tenant moves out do **not** count as part of the 14 days.

❖ *SECTION 38 - POSSESSION UNOBTAINABLE*

If a tenant has been unable to move in because the residential premises is **not** available from the landlord or because the premises do **not** meet the minimum standards under the Public Health Act and regulations, the tenant has the right to repudiate the residential tenancy agreement. The tenant may do one or more of the following:

- Repudiate the residential tenancy agreement or apply to the Court of Queen's Bench for specific performance of the covenant;
- Recover general damages resulting from the breach;
- Recover special damages resulting from the breach if the landlord could reasonably have foreseen that those damages would be a consequence of the breach.

In other words, the tenant can ask the judge for damages caused by the landlord for **not** providing the premises. If the landlord could reasonably have known that the tenant would suffer damages by **not** providing the premises, the tenant can ask the court for special damages.

The tenant should have compelling evidence and proof of damages to present to the court. It would be wise for the tenant to hire a lawyer to present the case.

FORMS

Notice to terminate and notice to vacate forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association or the Alberta Residential Landlord Association.

The notice (and objection to the notice) has to be in writing and contain everything that the RTA requires. The RTA lists the content for the notices in the Residential Tenancies Ministerial Regulation. Landlords and tenants are free to prepare a form of notice that best suits their particular needs as long as the form has the content from the Regulation. The notice **cannot** take away any of the rights, benefits or protections contained in the Act.

NORMAL WEAR & TEAR

STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

1(1)(f)	landlord definition
1(1)(l)	residential premises definition
1(1)(m)	residential tenancy agreement definition
1(1)(t)	tenant definition
16(c)	landlord's covenants
21	tenant's covenants
37	tenant's remedies
46(1)(b)	normal wear and tear definition
46(5)	deductions from security deposit

There are no sections in the Regulations relating directly to "normal wear and tear".

GUIDELINES

Normal wear and tear is defined in the RTA as deterioration that takes place over time from the use of the residential premises, even when the tenant provides reasonable care and maintenance.

The residential premises are the landlord's property and naturally, the landlord wants and expects them to be looked after and kept clean and in good repair. However, over time, even with the best care and attention by the tenant, things wear out.

The tenant should maintain the residential premises in a condition that is, at the very least, no worse than it was when the tenant moved in, allowing for normal wear and tear.

The landlord can conduct periodic inspections to confirm that the tenant is **not** damaging the premises and is keeping them in a reasonably clean condition. (see Landlord's Right of Entry section).

The RTA and *Public Health Act* require landlords to ensure that the residential premises meet certain standards at all times. The Minimum Housing and Health Standards that the landlord **must** meet are contained in the Housing Regulation and Nuisance and General Sanitation Regulation, both under the *Public Health Act*.

In addition, it is a covenant of every residential tenancy agreement that the tenant will
". . . **not** do or permit significant damage to the premises, the common property . . . . [and] the tenant will maintain the premises and any property rented with it in a reasonably clean condition".

Typically the tenant is responsible for looking after the residential premises, but the tenant is **not** responsible for everything in the residential premises. The plumbing, heating/air conditioning, and electric services are some examples of systems within the premises that the landlord is responsible for maintaining as per the Minimum Housing and Health Standards. However, this does **not** take away the tenant's obligation **not** to damage those systems. It also does **not** relieve the tenant of liability for repair if they or a family member or guest, or even a pet, cause damage to the residential premises.

The tenant also has the responsibility to inform the landlord if anything in the residential premises needs repair or replacement. It is a good idea for the tenant to put their request for repairs in writing and keep a copy. A landlord should respond to a request from a tenant for repairs within a reasonable period of time. In some cases, tenants may elect to have landlord's repairs completed and then apply to court to be compensated for the cost of performing the landlord's obligations. Repair costs **cannot** be deducted from rent unless agreed to by both parties.

One way to reduce, if **not** eliminate, most of the potential areas of dispute is for both the landlord and tenant to be clear on responsibilities for maintenance of the residential premises from the start of the tenancy. The residential tenancy agreement should say what the landlord is responsible for looking after and repairing and what the tenant is responsible for taking care of and repairing.

A landlord **cannot** make deductions from a security deposit for restoring or repairing costs resulting from normal wear and tear, even if there is a clause saying the opposite in a residential tenancy agreement. The RTA protects the security deposit from deductions for normal wear and tear as the RTA requires landlords to complete move-in and move-out inspection reports so the landlord and tenant can determine whether there are needed repairs or extra cleaning. If the inspection reports are **not** completed, the landlord is **not** entitled to make deductions from security deposits to cover cleaning or repair costs. However, the clause will allow the landlord to sue the tenant for the charges agreed to.

A tenant has the responsibility for ordinary cleaning and for cleaning the results of extraordinary or abnormal use. Some examples of damages to the physical condition of rental premises for which deductions can be made (when inspection reports are properly completed) are:

- Steam cleaning of rugs with obvious dirt, soil, oil or urine stains or holes
- Badly repaired holes in walls
- Pushed in door panels
- Food, dirt or nicotine on walls, cupboards and appliances
- Broken glass
- Holes in window screens
- Garbage or litter strewn about
- Pet excrements.

Some examples of normal wear and tear for which deductions are **not** allowable are:

- Professional shampooing of rugs, when there were no excess foreign materials
- Professional cleaning of drapes, when there were no excess foreign materials.

The cleaning of carpeting or rugs is one of the main sources of conflict between landlords and tenants. If the tenant had a pet that was **not** caged, steam cleaning will almost certainly be required regardless of the length of the tenancy. But that doesn't mean that every time a tenancy ends professional carpet cleaning is required and the expense can be charged to the tenant. If the landlord wants to do that, the carpet will have to have been in such a condition that professional cleaning is required.

The landlord **cannot** charge a tenant for the total replacement of a worn out carpet or rug simply because that particular tenant happened to be leaving at a time when the replacement is required.

Spilled liquids, cigarette burns, oil stains or mud tracked onto carpets may be occurrences of everyday living, but they are **not** normal wear and tear. The overall deterioration to the carpet from repeated cleanings is normal wear and tear.

Hanging pictures on walls is an issue between landlords and tenants. Consideration **must** be given to both the number of pictures that are hung on the walls, and the manner in which they are hung. A tenant should check with the landlord regarding what is acceptable.

A tenant who rents a single-family home, townhouse or duplex, and has the exclusive use of the yard or part of the yard, is generally responsible for routine yard maintenance and snow removal. The parties may agree to arrangements for ongoing maintenance in the residential tenancy agreement.

A landlord has to maintain the residential premises in good repair in compliance with all building, health, fire and safety standards and is required to perform any other obligations outlined in the residential tenancy agreement.

If a landlord does **not** fulfill the landlord's obligations, the tenant may apply to court or RTDRS for one or more of the following remedies:

(a.) Recovery for damages because of the breach or contravention by the landlord,

(b.) Reduction in rent (abatement of rent) if the tenant has lost a benefit of the tenancy,

(c.) Compensation for the cost of performing the landlord's obligations, or

(d.) Termination of the tenancy by reason of the breach or contravention if, in the opinion of the court, the breach or contravention should cause the tenancy to be terminated.

A tenant who shows the landlord that they are responsible and will look after the residential premises will have fewer problems during the tenancy.

A landlord who shows the tenant that they care about the upkeep of the residential premises is more likely to see the same behaviour from a tenant than a landlord who neglects the residential premises and doesn't look after maintenance, repairs or replacement.

ABANDONED GOODS

STATUTORY REFERENCES

Residential Tenancies Act sections:

1(1)(f) definition of landlord

1(1)(t) definition of tenant

1(1)(l) definition of residential premises

31 abandoned goods

Residential Tenancies Ministerial Regulation sections:

5 abandoned goods

6 establishing tenant's liabilities

GUIDELINES

This section of the RTA does **not** apply to the goods left at residential premises when an Order for Possession is executed by a civil enforcement agency. These goods are to be handled in accordance with the Rules of Court.

Abandoned Goods are goods that are left at residential premises by a tenant who has

- Abandoned the premises, or
- Vacated at the end of the tenancy, as it may have expired or been terminated, but left their things behind

GOODS VALUED AT LESS THAN $2,000.

If a landlord believes that the total market value of the goods is less than $2,000, then the landlord can dispose of the goods

GOODS VALUED AT MORE THAN $2,000.

If a landlord believes that:

- It would be unsanitary or unsafe to store the goods, or
- That storage of the goods would result in total or substantial depreciation of the total market value, or
- The cost of removing, storing and selling the goods would exceed the proceed of their sale,

the landlord may then sell the goods in a way and for a price that the landlord believes is reasonable.

Unless the previously stated conditions are met, the landlord **must**:

- Store the goods or arrange for storage of the goods on behalf of the tenant for 30 days from the day the goods were abandoned, and
- After the 30 days have passed, the landlord may dispose of the goods by public auction or if the Courts or the Residential Tenancy Dispute Resolution Service (RTDRS) approve, by private sale. If at public auction the goods are **not** bid on, then the landlord can dispose of them.

The landlord is **not** personally liable for goods that are sold or disposed of, if those goods are sold or disposed of in accordance with the legislation.

The person that acquires the abandoned goods through their disposal or sale by the landlord then has rights over those goods and becomes the owner of those goods. The tenant who abandoned the goods is no longer the owner.

If a tenant pays the landlord what the landlord is owed while the landlord still has the goods and pays the landlord for the cost of having to remove and store the goods, the landlord **must** then return the tenant's goods.

If the landlord sells the goods, they can use the money from the sale of the goods

- To recover their costs for removing, storing and selling the goods, and
- To recover the money owed to them by the tenant (called tenant's liability under the Regulation), if money is owed to them by the tenant in accordance with the requirements under the Regulations

The Residential Tenancies Ministerial Regulation, section 6(2) states "*tenant's liability is established for rent when the landlord makes an affidavit that sets out the amount of rent owing and sends a copy of that affidavit to the tenant's last known address*". The landlord **must** also provide a copy of that affidavit to the Director of Residential Tenancies.

The Residential Tenancies Ministerial Regulation, section 6(3) states that tenant's liability is established for damages when:

- The landlord makes an affidavit that sets out the damage done by the tenant,
- The cost of the repairs, and
- The cost for materials along with the receipts as exhibits to prove the expenses.

If the landlord completed the work themselves, labour can be charged at a reasonable cost. The landlord **must** also provide a copy of that affidavit to the Director of Residential Tenancies.

The Residential Tenancies Ministerial Regulation, section 6(4) also state that "*a tenant's liability is established if the landlord obtains a judgment from the Courts*". This includes judgments from the RTDRS.

Any monies left over after the landlord has recovered what is owed to him **must** be sent to the Minister.

The Minister will then hold that money in trust for one year. After that year has passed, the tenant will no longer have any claim to that money.

A landlord is required to keep a written record of the storage, disposition and sale of the goods. The RTA sets out exactly what **must** be included in the record. These records **must** be kept by the landlord for a period of three years after the goods are returned to the tenant, sold or disposed of.

PRACTICAL APPLICATIONS

Example, a landlord believes that their tenants have abandoned the residential premises. The landlord provides a 24-hour notice of entry then enters the house the next day. He finds that the tenant has left behind a living room set including a large sectional sofa that is infested with bedbugs. While the living room set is likely valued over $2,000 it is unsanitary to keep and would be expensive to fumigate. Therefore the landlord can dispose of the goods.

Example, a landlord collects $5,000 from the sale of a tenant's abandoned goods at an auction. Including the cost for removing, storing and selling the items, the landlord is owed $3,000. The landlord **must** pay the remaining $2,000 to the Minister, which will then be held in trust for the tenant for one year. The landlord **must** also create a written record of the storage, and disposition or sale of the goods. Those records **must** conform to the requirements under section 31(13) of the RTA and **must** be kept by the landlord for three years.

EMERGING ISSUES

BED BUGS

The following bed bug information is courtesy of the Alberta Residential Landlord Association.

RECOGNIZING A BED BUG

❖ *FROM ITS APPEARANCE*

Bed bugs are small insects that feed mainly on human blood. A newly hatched bed bug is semi-transparent, light tan in colour and the size of a pin head. Adult bed bugs are flat, have rusty red coloured oval bodies and are about the size of an apple seed. Bed bugs may be confused with other small household insects including carpet beetles, sowbugs and newly hatched cockroaches (nymphs).

❖ *FROM ITS MARKINGS, DROPPINGS AND EGGS*

Blood stains, droppings and eggs can be found in several locations including:

- Mattress seams and tufts, sheets, pillow cases and upholstered furniture.
- Crevices and cracks in furniture.
- Baseboards of walls.

❖ *HOW BED BUGS GROW AND REPRODUCE*

Bed bugs are most active when we sleep. They crawl onto exposed skin, inject a mild anesthetic and suck up a small amount of blood. Most people never feel the actual bite.

❖ *THE HEALTH EFFECTS OF BED BUGS*

Although bed bugs and their bites are a nuisance, they are **not** known to spread disease.

❖ *PREVENTING BED BUGS FROM INFESTING YOUR HOME*

Bed bugs can enter homes by latching onto used furniture, luggage, shoes and clothing, and can travel along connecting pipes and wiring.

Never bring bed frames, mattresses, box springs or upholstered furniture found on the street into your home. Check all used or rented furniture for bed bugs.

When traveling, inspect the bed and furniture. Keep suitcases off the floor and bed and inspect them before you leave.

If you suspect you have been around bed bugs, immediately dry your clothing on the hottest setting for 30 minutes or store it in a sealed plastic bag until you can put clothing in the dryer.

Seal cracks and crevices in walls and baseboards with caulk even if you don't have bed bugs. This will help prevent bed bugs and other pests from coming in.

❖ *INSPECTING FOR BED BUGS*

Look for bed bugs, blood stains, droppings and eggs (a flashlight and a magnifying glass will help). Start by looking in an area three to four metres (10 to 20 feet) around where you sleep or sit.

❖ *CONTROL MEASURES*

A bed bug infestation can happen to anyone and control measures **must** be started as soon as possible and continued until the bed bugs are gone from your home. It may require several weeks of inspecting your home for bed bugs.

Having bed bugs is stressful. Getting rid of them requires lots of hard work and extra expense. Treatment is more successful if a combination of physical and chemical control measures is used.

❖ *CHOOSING AND WORKING WITH AN APPROVED PEST CONTROL OPERATOR*

Bed bug infestations usually require the services of a well-trained, licensed pest control operator, also called exterminators. Professional pest control operators **must** be approved by Alberta Environment.

❖ *ASK THE PROFESSIONAL TO:*

- Use the least-toxic pesticide labeled for bed bugs that will be effective
- Ensure all instructions and warnings on product labels are followed
- Tell you when it's safe to re-enter a treated room
- Let you know if and when another treatment will be necessary
- Tell you when you can start your weekly cleaning

❖ *WHAT LANDLORDS AND BUILDING MANAGERS CAN DO*

Provide tenants with information about bed bugs. Encourage everyone to report bed bugs as soon as they know of a problem. Notify tenants and inspect all units adjacent to, above and below apartments found to have bed bugs.

Hire a professional pest control operator approved by Alberta Environment and/or heat treatment professional operator to treat for bed bugs. Be wary of companies that make unrealistic claims that bed bugs can be controlled with one visit.

❖ *ADDITIONAL RESOURCES*

Alberta Residential Landlord Association:
Alberta Residential Landlord Association Bed Bug Info Sheet -
http://www.albertalandlord.org/devlive/index.php/Resources/Bed-Bugs/

Alberta Health Services:

Bedbug Clean-Up & Prevention - https://myhealth.alberta.ca/Alberta/Pages/How-to-prevent-bed-bug-infestations.aspx

RESOURCES AND REFERRAL INFORMATION

CONSUMER CONTACT CENTRE

For answers to questions and/or referrals on tenancy legislation and issues you can call 780-427-4088 in Edmonton or toll-free in Alberta at 1-877-427-4088. Any questions you have about the RTA can also be e-mailed to rta@gov.ab.ca.

DISPUTE RESOLUTION

Disputes between landlords and tenants can be dealt with through the courts or the Residential Tenancy Dispute Resolution Service (RTDRS). The RTDRS allows landlords and tenants to have their disputes heard outside the court system. For more information contact RTDRS in **Edmonton**: 780-644-3000, or in **Alberta**: Toll-free: 310-0000 (then 780-644-3000). Website: http://servicealberta.ca/landlord-tenant-disputes.cfm.

PROVINCIAL COURT OF ALBERTA

Landlords and tenants who wish to make an application to the court under the RTA should obtain the booklet: "Application in Provincial Court of Alberta under the *Residential Tenancies Act* and *Mobile Home Sites Tenancies Act*—Instructions for Landlords and Tenants".The booklet is available at Provincial Court locations or online at: https://albertacourts.ca/provincial-court/civil-small-claims-court/forms-publications. Additional information on the residential tenancy court process is also available at: https://albertacourts.ca/provincial-court/civil-small-claims-court/residential-tenancies-process. The Court of Queen's Bench also has the authority to deal with disputes.

ALBERTA PROVINCIAL COURT CASE LAW - JUDGMENTS

To find the most recent Alberta Provincial Court landlord and tenant judgments, search by the landlord or tenant's name or use search terms: landlord, tenant or landlord and tenant from this link: http://www.canlii.org/en/ab/abpc/

COMPLAINTS

Service Alberta investigates contraventions of the *Residential Tenancies Act*. The infosheet, "Filing a Consumer Complaint with Service Alberta" explains how to file a complaint with Service Alberta: http://www.servicealberta.ca/pdf/tipsheets/Filing_a_complaint_with_CS.pdf.

QUEEN'S PRINTER BOOKSTORE

You may purchase the RTA and the regulations from the Queen's Printer Bookstore. These are also free for you to download in the "pdf" or "html" formats.(If you are ordering copies of the legislation, you will need at least the RTA and the Residential Tenancies Ministerial Regulation.) Edmonton: 780-427-4952 or toll-free in Alberta: Dial 310-0000 then 780-427-4952 www.qp.alberta.ca

LANDLORD AND TENANT ADVISORY BOARDS AND INFORMATION SERVICES

These organizations provide advice and information to residential tenants and landlords to address tenancy issues. They also make tenancy forms available (for a fee).

EDMONTON LANDLORD AND TENANT ADVISORY BOARD (ELTAB)

780-496-5959

www.edmonton.ca (search Landlord or Tenant)

ALBERTA RESIDENTIAL LANDLORD ASSOCIATION

Phone: 780-413-9773

http://www.albertalandlord.org/

FORT McMURRAY LANDLORD AND TENANT ADVISORY BOARD

(Regional Municipality of Wood Buffalo)

780-743-7888

http://www.rmwb.ca/page1342.aspx

RED DEER - CENTRAL ALBERTA COMMUNITY LEGAL CLINIC (CACLC)

403-314-9129

http://www.communitylegalclinic.net/

CALGARY RESIDENTIAL RENTAL ASSOCIATION

Phone: 403-265-6055

web: http://www.crra.ca

OTHER REFERRALS

RESIDENTIAL TENANCIES TIPSHEETS

http://www.servicealberta.ca/Landlords-and-tenants-tipsheets.cfm

LAWS FOR LANDLORDS AND TENANTS IN ALBERTA

www.landlordandtenant.org

LANDLORD AND TENANT LAW IN ALBERTA

www.slsedmonton.com/civil/landlord-and-tenant-law/

CANADA MORTGAGE AND HOUSING CORPORATION "YOUR GUIDE TO RENTING A HOME"

www.cmhc-schl.gc.ca/en/co/reho/index.cfm

ALBERTA COURTS – PROVINCIAL COURT

Publications and Forms - Civil Court Publications - Sheriff - Civil Enforcement

https://albertacourts.ca/provincial-court/civil-small-claims-court/forms-publications

HUMAN SERVICES DESIGNATED AUTHORITY
Dial 310-0000 then 422-4080

FAMILY VIOLENCE INFORMATION LINE
310-1818

ALBERTA SUPPORTS
1-877-644-9992
http://www.alberta.ca/alberta-supports.aspx